

Lost Empire Herbs Affiliate Program

Affiliate Agreement

This Affiliate Agreement (“Agreement”) contains the complete terms and conditions between ZLC3 LLC DBA Lost Empire Herbs (“LEH”) and you (“Affiliate”), regarding your application to and participation in the LEH Affiliate Program as an affiliate of LEH, and the establishment of links from your website to our website, <https://www.lostempireherbs.com>.

By submitting an application to the LEH Affiliate Program, Affiliate warrants to have read and reviewed this Agreement and agrees to be bound by it. If Affiliate does not agree to be bound by this Agreement after reading and reviewing it, please leave the website immediately and do not submit an application to the LEH Affiliate Program. This Agreement specifically incorporates by reference any Terms and Conditions, Privacy Policies, End-User License Agreements, or other legal documents which we may have on our website.

Section 1: Defined Terms

As used in this Agreement, the following terms have the meanings set forth below:

"Affiliate" means the business, individual, or entity applying to or participating in the LEH Affiliate Program, or that displays LEH Products and Services and/or promotions on its website, or other means, using an affiliate tracking code in exchange for receiving a commission from LEH for sales directly resulting from such display.

"Affiliate Site" means the Affiliate's website which displays LEH Products and Services and/or promotions.

"LEH Affiliate Program" means the affiliate program, started and maintained by LEH, that is the subject of this Agreement.

"LEH Affiliate Program Portal" means the online portal on the LEH website that contains links, graphics, HTML code, and program information for use by LEH affiliates.

"LEH Products and Services" means herbs, tinctures, informational products, and any other related products and services that are available for purchase from LEH.

"Commission Fees" means the amount you will be paid for each Qualified Purchase, by a Referred Customer that you refer to LEH, subject to the commission threshold and pursuant to the terms of this Agreement.

"Qualified Purchase" means a sale of LEH Products and Services, by LEH to a Referred Customer, that is not excluded under Section 4.

"Referred Customer" means a new and unique customer referred to LEH from Affiliate through a Link, as defined in Section 3, that purchases LEH Products and Services.

Section 2: Enrollment

To begin the enrollment process, Affiliate must submit a LEH Affiliate Program online application. The LEH Affiliate Program online application can be found at <https://www.lostempireherbs.com/affiliate>.

LEH will evaluation Affiliate's online application in good faith and will notify Affiliate of its acceptance or rejection in a timely manner. LEH may reject Affiliate's online application if LEH determines, in its sole discretion, that Affiliate's website is not suitable for the LEH Affiliate Program for any reason, including, but not limited to, its inclusion of content that is, in its opinion, unlawful or otherwise violates its internal policies and/or usage requirements.

If LEH rejects Affiliate's online application, for any reason, Affiliate may not re-apply to the LEH Affiliate Program utilizing the same domain name or reapply using a different domain name and then add the previously rejected domain name to Affiliate's account. LEH, in its sole discretion, reserves the right to notify or to not notify any prospective affiliate of their rejection or removal from the LEH Affiliate Program at any time.

Section 3: Promotion of Affiliate Relationship

3.1 Use of Links. If Affiliate qualifies and agrees to participate in the LEH Affiliate Program, LEH will make a variety of graphic, textual, and HTML code links available to Affiliate (each referred to as a "Link" or collectively as the "Links") via the LEH Affiliate Program Portal. The Links will serve to identify Affiliate's website as a member of the LEH Affiliate Program and will establish a link from Affiliate's website or e-mail messages to LEH's website. Affiliate agrees to cooperate fully with LEH in order to establish and maintain such Links. Affiliate further agrees that use of the Links must be in compliance with this Agreement at all times. LEH may modify the Links from time to time in its sole discretion. Affiliate will not use graphic or textual images, custom HTML code, or text messages to promote LEH that are not approved in advance by LEH. Affiliate Sites shall display the Links prominently in all relevant sections of their website. Furthermore, Affiliate shall not use cookie stuffing techniques that set the affiliate tracking cookie without the Referred Customer's knowledge. LEH must preapprove, in writing, any information with respect to LEH that is going to be displayed on Affiliate Sites but is not contained in the LEH Affiliate Program Portal.

3.2 Promotional Restrictions. Except as permitted in this Agreement, Affiliate shall not and is not authorized to: (i) use the LEH trademark, name, product names, or any other intellectual property, including but not limited to, the Links and LEH Affiliate Program Portal materials ("LEH IP"), or any variations or misspellings of these LEH IP holdings or other terms or terms confusingly similar to any of these LEH IP holdings without LEH's express written permission; (ii) use LEH IP in a domain or website name, in any bids for Key Words or Google Adwords, or similar advertising programs at other search engines, in any search engine advertising, paid or otherwise, in any metatags, Google Adwords, Key Words, advertising, search terms, code, or otherwise; or (iii) act in any way that causes, creates, or could cause or create any initial interest confusion over the use of LEH IP on the internet, in print materials, or in any search engine advertising. Affiliate's use of the LEH IP in any manner, other than as

expressly permitted in this Agreement, shall constitute unlawful infringement of LEH's intellectual property rights, and may subject Affiliate to claims for damages, including potential treble damages for knowing and willful infringement, and the obligation to pay LEH's legal fees and cost associated with any action or proceeding in which LEH seeks to enforce its rights under this Agreement or with regard to any of LEH's intellectual property rights.

3.3 Discounts and Coupons. Affiliate shall not post any refunds, credits, or discounts on LEH Products and Services without LEH's prior written consent in each instance. Affiliates may only use coupons and discounts that are provided exclusively through the LEH Affiliate Program Portal using banners and links. Each Link connecting users to the Affiliate Site to the pertinent area of the LEH website will in no way alter the look, feel, or functionality of the LEH website. Any violations of the terms of this Agreement regarding links, coupons, refunds, credits, or discounts shall constitute a material breach of this Agreement and will result in Affiliate's termination from the Affiliate Program or the withholding of Commission Fees.

Section 4: Commission Determination; Qualified Purchases

4.1 Commission Calculation. Commission fees will be calculated based on the specified percentages stated on the LEH website for each Qualified Purchase that takes place during the period for which such commission fee is being calculated. LEH reserves the right to change these specified percentages at any time and for any reason. Any changes to these specified percentages will be effective once they are posted on the LEH website.

- 4.2 Qualified Purchase.** A Qualified Purchase does not include the following:
- (a) A purchase by a Referred Customer that has transferred from any LEH partners or subsidiaries.
 - (b) A purchase by a Referred Customer who is also associated with any LEH reseller, referral, or other program.
 - (c) A purchase by a Referred Customer that is subject to a refund.
 - (d) A purchase that was made prior to the Affiliate joining the LEH Affiliate Program or was not tracked properly through a Affiliate Link.
 - (e) A purchase that LEH suspects, in its sole discretion, is the result of fraud, which shall include but is not limited to, the use of software that generates real and fictitious information, multiple accounts from the same customer, or the referral of accounts that do not comply with this Agreement.
 - (f) A purchase by a Referred Customer if the Referred Customer was offered or received coupons, refunds, credits or discounts from the Affiliate.
 - (g) A purchase by a Referred Customer if the Affiliate or Referred Customer is in or is promoting a business-opportunity program, as determined by LEH in its sole discretion.
 - (h) A purchase by a Referred Customer who received a popup with a discounted offer, while leaving LEH's website during their purchase.
 - (i) A purchase by a Referred Customer engaging in domain speculation, which is determined by the identification of two (2) web hosting accounts with the same Referred Customer's name, email address, or other identifying characteristic as determined by LEH or the identification of two (2) or more web hosting

accounts that have no content on their websites or have similar content, templates, or formatting, as determined by LEH, in its sole discretion.

4.3 Withholding and Suspension of Commission Fees. LEH reserves the right to: (i) withhold payment of initial Commissions Fees to Affiliates who are new to the Affiliate Program, or who have commissions that are potentially fraudulent as determined by LEH in its sole discretion, to determine the legitimacy of Referred Customers; (ii) suspend the payment of Commission Fees at any time and indefinitely, if it suspects fraud or other improper activity or a potential breach of any of the terms of this Agreement by the Affiliate or a Referred Customer; (iii) immediately cancel or withhold for later review any Commission Fee that fails to meet the criteria of a Qualified Purchase; or (iv) deduct from Affiliate's current and future Commission Fees any and all Commission Fees corresponding to any fraudulent, questionable, and cancelled purchases.

4.4 Manipulation, Falsification, or Inflation of Commission Fees. Any attempt by an Affiliate to manipulate, falsify or inflate Referred Customers, Qualified Purchases, or Commission Fees to intentionally defraud LEH constitutes immediate grounds for LEH to terminate Affiliate's participation in the LEH Affiliate Program and will result in the forfeiture of any Commission Fees due to the Affiliate.

Section 5: Commission Payments

5.1 Commission Payment Schedule. Commission Fees will be processed approximately five (5) days after the end of the month in which they are earned. LEH reserves the right to modify this payment schedule at any time. Any changes to this payment schedule will be effective once they are posted on the LEH website.

5.2 Commission Payment Methods. Affiliates will receive Commission Fees through Paypal, subject to the following conditions:

(a) International PayPal Payments: Please refer to PayPal's policy to ensure you are eligible to receive Commission Fee payments via PayPal if you reside outside of the United States.

(b) PayPal Fees: LEH is not responsible for paying any third-party fees charged by PayPal in order for Affiliate to receive Commission Fees.

(c) Right to Modify: LEH reserves the right to modify the available commission payment methods at any time. Any changes to the available commission payment methods will be effective once they are posted on the LEH website.

5.3 Commission Payment Disputes. Affiliate agrees to file any commission payment disputes within forty-five (45) days after the end of the month in which the sale or event that is disputed occurred. Disputes filed after forty-five (45) days of the date on which the disputed sale or event occurred will not be accepted by LEH and Affiliate forfeits any rights to a potential claim.

5.4 Tax Information. Each Affiliate is required to submit a W8/W9 tax form before any Commission Fees shall be paid. Affiliate is responsible for the payment of all taxes related to the Commission Fees paid to Affiliate under this Agreement. In compliance with U.S. tax laws, LEH will issue a Form 1099 to Affiliates whose earnings meet or exceed the applicable threshold.

Section 6: Obligations Regarding Affiliate Site

6.1 Development, Operation and Maintenance of Affiliate Site. Affiliate is solely responsible for the development, operation, and maintenance of Affiliate Site and for all materials that appear on Affiliate Site. Such responsibilities include, but are not limited to, the technical operation of Affiliate Site and all related equipment; creating and posting product reviews, descriptions, and references on Affiliate Site and linking those descriptions to LEH website; the accuracy of materials posted on Affiliate Site, including, but not limited to, all materials related to LEH Products and Services; ensuring that materials posted on Affiliate Site do not violate or infringe upon the rights of any third party and are not libelous or otherwise illegal. LEH disclaims all liability and responsibility for Affiliate Site.

6.2 Monitoring of Affiliate Site. LEH has the right, in its sole discretion, to monitor Affiliate Site Links and content from time to time to determine if Affiliate is in compliance with the terms of this Agreement. If Affiliate is not in compliance, LEH may terminate Affiliate's participation in the LEH Affiliate Program effective immediately.

Section 7: LEH Responsibilities

7.1 LEH Affiliate Program Portal. LEH will provide all information necessary for Affiliate to make Links from Affiliate Site to LEH site in the Affiliate Portal. LEH will be solely responsible for placement of content, Links, graphics, and other Affiliate Program resources in the LEH Affiliate Program Portal.

7.2 Order Processing. LEH will process orders placed by Referred Customers who follow the Links from an Affiliate Site to LEH website. LEH reserves the right, in its sole discretion, to reject orders that do not comply with certain requirements that LEH may establish from time to time. All aspects of order processing and fulfillment, including LEH's services, cancellation, processing, refunds and payment processing will be LEH's responsibility. LEH will track the Qualified Purchases generated by Affiliate Site and will make this information available to Affiliate through LEH Affiliate Program Portal. To permit accurate tracking, reporting, and commission accrual, Affiliate must ensure that the Links between Affiliate Site and LEH website are properly formatted.

Section 8: Data Protection and Procedural Compliance

8.1 FTC Endorsement Compliance. LEH requires all affiliates to comply with applicable laws, regulations and guidelines concerning advertising and marketing, including without limitation, the [Federal Trade Commission \(FTC\) Endorsement Guides](#), which require

that material connections between advertisers and endorsers be disclosed. This means that all Affiliate Sites (e.g. directories, review/rating websites, blogs, and other websites) and any email or collateral that provide an endorsement or assessment of LEH's Products and Services must prominently disclose the fact that Affiliate receives compensation for Referred Customers. LEH reserves the right to withhold Commission Fees and possibly terminate Affiliate's participation in the LEH Affiliate Program should LEH determine, in its sole discretion, that Affiliate is not in compliance with the previously-mentioned guides or other FTC regulations that may be relevant.

8.2 GDPR Compliance. In addition to the obligations set forth in Section 8.1, Affiliate shall comply with all applicable data protection laws regarding the transmission of data exported to or from the United States or the country in which Affiliate resides, including without limitation, the General Data Protection Regulation 2016/679 of European Parliament and of the Council of 27 April 2016 ("GDPR"). Affiliate, as a controller under the GDPR, shall also implement appropriate technical measures to ensure a level of security appropriate to the risk, considering the nature, scope, context, and purpose of processing any personal data. Affiliate agrees to promptly assist LEH in complying with any data subject rights request under the GDPR that LEH may receive from any individuals referred to LEH by Affiliate. Affiliate further agrees to promptly assist LEH in complying with any duties to cooperate with supervisory authorities under the GDPR.

8.3 CAN-SPAM Act Compliance. Affiliate shall not create, publish, transmit or distribute, under any circumstances, any bulk email messages without prior written consent from LEH, to be granted or denied in LEH's sole discretion, in each instance. Additionally, Affiliate may only send emails regarding LEH or LEH Affiliate Program to people who have previously consented to receiving such communications from Affiliate. Affiliate's failure to abide by this Section 8.3, the CAN-SPAM Act of 2003, and all applicable laws relating to email communications, in any manner, will be deemed a material breach of this Agreement by Affiliate and will result in the forfeiture by Affiliate of any and all rights Affiliate may have to any Commission Fees and the termination of Affiliate's participation in the LEH Affiliate Program.

Section 9: Use of Logos and Trademarks

9.1 Use of LEH Logos and Trademarks. Subject to the limitations set forth in Section 3 above and otherwise in this Agreement, LEH grants Affiliate a non-exclusive, non-transferable, revocable license to (i) access LEH website through the Links solely in accordance with the terms of this Agreement and (ii) solely in connection with such Links, to use the LEH trademarks, logos, and similar identifying material provided by LEH (collectively, "Licensed Materials"), for the sole purpose of selling LEH Products and Services on Affiliate Site and as approved in advance by LEH. Affiliate may not alter, modify, or change the Licensed Materials in any way. Affiliate is only entitled to use the Licensed Materials while Affiliate is in good standing and in compliance with all of the terms of this Agreement. This license shall terminate immediately upon the termination of Affiliate's participation in the LEH Affiliate Program.

9.2 Written Consent to Use LEH Logos and Trademarks. Affiliate shall not use the Licensed Materials for any purposes other than those contemplated and outlined in Section

9.1 of this Agreement, without first submitting a sample of the proposed use to LEH and obtaining the express written consent of LEH in each instance.

9.3 Use of Affiliate Logos and Trademarks. Affiliate grants to LEH a non-exclusive license to utilize Affiliate's name, title, trademarks, and logos ("Affiliate IP") in any advertisement or other materials used to promote LEH and the LEH Affiliate Program. This license shall terminate upon the termination of Affiliate's participation in the LEH Affiliate Program.

Section 10: Term and Termination

10.1 Term. The term of this Agreement will begin upon LEH's acceptance of Affiliate into the LEH Affiliate Program and will end when terminated by either party ("Term").

10.2 Commission Fees Prior to Termination. Affiliate is only eligible to earn Commission Fees on Qualified Purchases occurring during the Term. Commission Fees earned prior to the date of termination will be eligible for commissions only if the orders for the related LEH Products and Services comply with all of the terms of this Agreement. LEH may withhold the final payment of Commission Fees for a reasonable period of time to ensure that all Qualified Purchases are valid and payments from Referred Customers are legitimate as determined by LEH in its sole discretion.

10.3 Forfeiture of Commission Fees. Any Affiliate who violates the terms of this Agreement, LEH's Terms and Conditions, or any applicable law will immediately forfeit any right to any and all accrued, but not yet received, Commission Fees and will be immediately removed from the Affiliate Program.

10.4 Termination. Either party may terminate this Agreement at any time, with or without cause, by notifying the other party, in writing, of the act of termination. The date of termination will be the date that the notification of the act of termination is received.

Section 11: Representations and Warranties of Affiliate

Affiliate represents and warrants to LEH the following:

- (a) Affiliate has reviewed this Agreement and agrees to be bound by its terms.
- (b) Affiliate's acceptance of this Agreement and participation in the LEH Affiliate Program will not violate: (i) any provision of law, rule, or regulation to which Affiliate is subject; (ii) any order, judgment, or decree applicable to Affiliate or binding upon Affiliate's assets or properties; (iii) any provision of Affiliate's by-laws or certificate of incorporation; or (iv) any agreement or other instrument applicable to Affiliate or binding upon Affiliate's assets or properties.
- (c) Affiliate is the sole and exclusive owner of the Affiliate IP and has the power to grant to LEH the license to use such marks in the manner contemplated in this Agreement, and such grant will not: (i) breach, conflict

with, or constitute a default under any agreement or other instrument applicable to Affiliate or binding upon Affiliate's assets or properties; or (ii) infringe upon any trademark, trade name, service mark, copyright, or other proprietary right of any third person or entity.

- (d) Affiliate is not required to obtain consent, approval, or authorization of, or exemption by, or filing with, any governmental authority or any third party in connection with Affiliate's entrance into this Agreement.
- (e) There is no pending or threatened claim, action, or proceeding against Affiliate, or the Affiliate IP, and, to the best of Affiliate's knowledge, there is no basis for any such claim, action, or proceeding.
- (f) During the Term, Affiliate will not include in Affiliate Site content that is, in LEH's opinion, unlawful, harmful, threatening, defamatory, obscene, harassing, racially, ethically, or otherwise objectionable or in violation of LEH's Terms and Conditions.
- (g) Affiliate is at least eighteen (18) years of age.
- (h) Each Referred Customer is valid, genuine, and unique, and meets the criteria of a Qualified Purchase for generating a Commission Fee as provided in this Agreement.

Section 12: Relationship of Parties

This Agreement does not constitute and shall not be construed as constituting an association, partnership, joint venture, or relationship of principal and agent or employer and employee between LEH and Affiliate.

Section 13: Non-Exclusive

Affiliate acknowledges that LEH provides the same LEH Affiliate Program to other individuals and entities. Affiliate further acknowledges that nothing contained in this Agreement shall restrict, limit, or otherwise prohibit LEH from engaging in the Affiliate Program with other individuals or entities currently or in the future; provided, however, that such engagements and actions do not materially interfere with LEH's obligations to Affiliate under this Agreement. Furthermore, Affiliate is free to work with similar affiliate programs that are not in the same product category as the LEH Affiliate Program.

Section 14: Non-Disparagement

During the Term of this Agreement and the immediately following six (6) months, LEH and Affiliate agree that they will not, privately or publicly, disparage, or make derogatory, pejorative, or offensive remarks about the other party or any person or entity affiliated with either party. In the event either party truthfully answers questions posed by any governmental agency or the like, including, without limitation, truthfully testifying or answering questions under oath, this shall not be deemed a breach of this Section 14.

Section 15: Indemnification

Affiliate hereby agrees to indemnify and hold harmless LEH and its subsidiaries and affiliates, and their directors, officers, employees, agents, shareholders, partners, members, and other owners, against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses, including reasonable attorneys' fees ("Losses"), insofar as such Losses, or actions in respect thereof, arise out of or are based on: (i) any claim that LEH's use of the Affiliate IP infringes on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of any third party; (ii) any misrepresentation of a representation or warranty or breach of a covenant and agreement made by Affiliate in this Agreement; or (iii) any claim related to Affiliate Site, including, without limitation, its development, operation, maintenance and content not attributable to LEH.

Section 16: Disclaimers and Limitations

16.1 Disclaimer of Representations and Warranties. LEH makes no express or implied representations or warranties with respect to the LEH Affiliate Program, including, without limitation, warranties of fitness, merchantability, non-infringement, or any implied warranties arising out of the course of performance, dealing, or trade usage. In addition, LEH makes no representation that the operation of the LEH website and LEH Affiliate Program Portal will be uninterrupted or error free, and LEH will not be liable for the consequences of any interruptions or errors, including the tracking of information concerning Referred Customers during any period of interruption.

16.2 Limitation of Liability. LEH will not be liable for any indirect, special, incidental, or consequential damages, or any loss of revenue, profits, or data, arising in connection with this Agreement or the LEH Affiliate Program, even if LEH has been advised of the possibility of such damages. Further, any aggregate liability with respect to this Agreement and the LEH Affiliate Program will not exceed the total Commission Fees paid or payable to Affiliate under this Agreement during the six (6) month period immediately preceding the event giving rise to such liability.

Section 17: General Provisions

17.1 Governing Law. The laws of the State of California govern all matters arising out of or related to this Agreement. In the event that any litigation specifically permitted under this Agreement is initiated, the parties agree to submit to the personal jurisdiction of the state and federal courts located in Santa Cruz County, California. Both parties waive the right to any objection to venue, including assertion of the doctrine of forum non conveniens or similar legal doctrine.

17.2 Arbitration. In case a dispute between the parties relating to or arising out of this Agreement, the parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted in Santa Cruz County, California. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add

parties, vary the provisions of this Agreement, award punitive damages, or certify a class. Intellectual property claims by LEH will not be subject to arbitration and may, as an exception to this provision, be litigated.

17.3 Assignment. Affiliate may not assign this Agreement, by operation of law or otherwise, without prior written consent of LEH.

17.4 Waiver. Failure of either party at any time or times to demand strict performance by the other party of any of the terms, covenants, or conditions set forth in this Agreement shall not be construed as a continuing waiver or relinquishment of the same and each party may at any time demand strict performance by the other party of such terms, covenants, and conditions. Any waiver of rights under this Agreement must be set forth in writing.

17.5 Confidentiality. Each of the parties agree that all information including, without limitation, the terms of this Agreement, business and financial information, LEH and vendor lists, and pricing and sales information, shall remain strictly confidential and shall not be utilized for any purpose outside the terms of this Agreement except and solely to the extent that any such information is: (a) already lawfully known to or independently developed by the receiving party; (b) disclosed in published materials; (c) generally known to the public; or (d) lawfully obtained from any third party free from any obligation of confidentiality under this Agreement. Notwithstanding the foregoing, each party is hereby authorized to deliver a copy of any such information: (a) to any person pursuant to a valid subpoena or order issued by any court or administrative agency of competent jurisdiction; (b) to its accountants, attorneys, or other agents on a confidential basis; and (c) otherwise as required by applicable law, rule, regulation, or legal process including, without limitation, the Securities Exchange Act of 1933, as amended, and the rules and regulations promulgated thereunder, and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

17.6 Modification. LEH may modify this Agreement at any time in its sole discretion; provided that the changes shall solely apply to events occurring after the date on which you accept and agree to such modifications unless you otherwise agree in this Agreement. Such modifications shall take effect when posted on LEH website. Modifications may include, but are not limited to, changes in the scope of available Commission Fees, commission amounts or percentages, payment procedures, Commission Fee payment schedules, and LEH Affiliate Program rules. If Affiliate deems any modification as unacceptable, the only recourse is to terminate this Agreement, in which event Affiliate shall be entitled to the rights under the unmodified Agreement prior to the date of the applicable modification. Affiliate's continued participation in the Affiliate Program following the posting of any modification on LEH website will constitute binding acceptance of the change.

17.7 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, promises, representations, negotiations, and understandings between LEH and Affiliate concerning the LEH Affiliate Program.

This file was last modified on April 24, 2019.