

# Elemental Entrepreneurship Affiliate Agreement

The following Affiliate Agreement (“Agreement”) is entered into by and between Intuitive Edge Coaching LLC (“**Company**”, “**we**”, or “**us**”) and the party submitting an application to become an affiliate of the Company and/or having an accepted application (“**Affiliate**” or “**You**”).

The Company has set up a program for affiliates to promote its products in exchange for a share of the proceeds of any sales (the “**Affiliate Program**”). Except as modified by a separate agreement governing the promotion of any particular product, the terms of this Agreement apply to your participation in any the Company’s Affiliate Program.

By submitting an application to participate in the Affiliate Program and/or by otherwise participating in the Affiliate Program, you are expressly agreeing to the terms and conditions set out in this Agreement and in any agreement that might apply to individual products.

## Application & Acceptance

To participate in the Affiliate Program, you must complete an Affiliate Program application (“**Application**”). You are required to answer all questions in that Application, and your answers must be accurate and complete.

To participate in the Affiliate Program, you must provide the Company with your true identity and other contact information, as well as business and banking information as requested. You may not use any alias, pseudonym, persona, pen name, DBA, or other means to mask your identity or business details.

The Company will rely upon the information provided in your Application, and any false information will be a basis to reject your Application or to terminate your status as an Affiliate without compensation if discovered after you are approved.

The Company will review your Application and decide whether to accept you as an Affiliate. We will notify you in due course of your acceptance or rejection as an Affiliate. We may accept or reject your Application at our sole discretion for any or no reason.

Upon acceptance into the Affiliate Program, you will receive an email notifying you of your acceptance and that includes your Affiliate credentials

(including details about how to obtain your links to share and other important information).

## **Taxes and Payment Gateways**

Affiliate shall not be eligible to receive any payments from the Company until Affiliate has submitted the appropriate tax forms and has set up a proper payment gateway.

Affiliate shall be required to complete either a W9 or a W8BEN. It is Affiliate's sole responsibility to provide the required forms in a timely manner. No payments shall be made to Affiliate until such form is provided.

The Company shall pay any sums due to Affiliate as set forth below through PayPal. Affiliate shall be responsible for providing the necessary information to facilitate the use of that payment method.

## **Commissions**

The Company will pay Affiliate a fee (a "**Commission**"), for each customer acquired as a result of a customer being referred to the Company using the unique tracking links assigned to the Affiliate ("**Affiliate Links**"). The

tracking and attribution of sales to Affiliates based upon their tracking links is done automatically by the Company's marketing automation system. Affiliates shall be paid only for sales that are tracked through the Company's marketing automation system and indicate the Affiliate Link as the source of the sale.

FOR PERCENT OF REVENUE: Affiliate shall receive a Commission payment equal to 5 % of the gross revenue for each sale of Elemental Entrepreneurship attributed to Affiliate using an Affiliate Link.

Affiliate agrees that the Company shall only be liable for payment of the Commissions to the extent it receives all funds due and owing to it from the relevant customer after the refund period has passed. Accordingly, Affiliate shall not be entitled to any Commission on a sale that is refunded, for which there is a chargeback, or for which the Company ultimately does not receive the sales proceeds as a result of credit card abuse or fraud.

The Company shall pay Commissions on the last business day of each month. The payout will include commissions earned during or before the month prior. Example: Affiliate A earns \$100 in commissions in the month of March. The commissions are paid on April 30th (or the business day before). This allows time to calculate and pay and give a reasonable period where chargebacks may occur. Commissions become payable when the affiliate has earned \$100 in commissions and will continue to be paid monthly afterwards.

## Right To Chargeback, Offset, and Holdback

Affiliate agrees that the Company shall have the right to charge back the Affiliate's account or otherwise adjust for any previously paid Commissions that ultimately are not commissionable under this Affiliate Agreement.

Specifically, in the event that a sale attributed to an Affiliate is charged back or otherwise challenged after the Commission has been paid, the Company shall have the right to charge back the Commission paid to the Affiliate.

Affiliate further agrees that the Company shall have the right to offset any Commissions due and payable to the Affiliate to account for any charge backs the Company experiences on sales for which Affiliate has already received a Commission.

Affiliate further agrees that the Company shall have the right to hold back up to 50% of the Commissions due ("**the Holdback**") for a period of 90 days to ensure an ability to offset any chargebacks. In the event that the Affiliate's chargeback percentage exceeds the Holdback for a period of two consecutive months, the Company shall have the right to increase the percentage of commissions held back from Affiliate. The Company shall provide written notice of any such increased holdback percentage that shall apply to Affiliate.

## **Representations and Warranties**

The Company represents and warrants:

-that it shall not knowingly and intentionally violate any law, regulation, or rule applicable to its business operations;

-that the products and/or services offered in connection with the Affiliate Program are legal products and services within the Company's jurisdiction;

-that it intends to be bound by the mutual promises, terms, and conditions of this Agreement; and

-that it has the necessary intellectual property and other rights to offer the products that are available for promotion under the Affiliate Program.

Affiliate represents and warrants:

-that Affiliate has read this Agreement, understands its terms, and agrees to be bound by this Agreement;

-that this Agreement constitutes Affiliate's valid and binding agreement and was executed by a person with authority to bind the Affiliate;

-that Affiliate's answers to the questions in the Application were truthful and accurate to the best of Affiliate's knowledge;

-that Affiliate will comply with CAN-SPAM, GDPR, and CA-SL requirements in connection with email marketing;

-that Affiliate will comply with all applicable Federal Trade Commission rules, regulations, and guidelines related to affiliate marketing;

-that Affiliate will not make use of the Company's name, trademark, or service mark in any manner other than expressly allowed under the Affiliate Program; and

-that Affiliate will not engage in any behavior that violates the terms of this Agreement or that constitutes an attempt to fraudulently or deceptively increase the earnings of Affiliate under this Affiliate Program.

## Promotional Materials, Limited License, and Intellectual Property

From time to time, the Company may make materials available to Affiliate for use in promoting the Company's products ("**Promotional Material**"). The Promotional Material may include the Company's logos, images of products that are part of the Affiliate Program, display banner advertisements, button links, text links, and other graphic and textual material for use in Affiliate's promotion efforts.

Upon acceptance into the Affiliate Program, the Company grants Affiliate a revocable, non-exclusive, worldwide, royalty-free license to use the Promotional Material during the term of this Agreement. The Affiliate may use the Promotional Material on its website, in emails, and in other promotional activities.

Affiliate may use any such Promotional Material solely for the purpose of promoting the Company's products and/or for linking to the Company's website. Affiliate may not make any other use of the Promotional Material and shall not state or imply that the Company has endorsed the Affiliate.

Affiliate agrees not to alter, add to, subtract from, or otherwise modify any of the Promotional Material provided by the Company without the express written consent of the Company. Moreover, Affiliate may not make any derivative works using the Promotional Materials.



## **Acceptable And Non-Acceptable Marketing Practices**

Affiliate shall post and make available to all end-users an appropriate privacy policy that complies with all applicable federal, state, and local laws and requirements. The privacy policy shall be made available to users prior to the collection of any personally identifiable information, and shall clearly disclose all information collection, use, and sharing practices, including any collection of information in connection with the Affiliate Program.

Affiliate shall not promote Company's products: (1) in conjunction with any any illegal activity, (2) on any illegal website, (3) in a manner that a reasonable person would consider threatening, harmful, defamatory, obscene, sexually explicit, harassing, or promoting violence; (4) in a manner that promotes discrimination, (5) in any manner the Company expressly deems as objectionable, or (6) in a manner that infringes upon the intellectual property or related rights held by any third party.

Affiliate shall not make any claims, guarantees, representations, or warranties about the Company's products, except as expressly authorized herein or in the Company's Website Terms of Use.

## **Term and Termination**

This Agreement shall commence upon the date the Company notifies you that you have been accepted into the Affiliate Program and shall continue thereafter until terminated as provided herein.

The Company may terminate this Agreement in full or in part at any time and for any reason it deems appropriate with or without prior notice to you. In the event of termination, the Company will disable any tracking URLs, links, cookies, pixels, and similar mechanisms for use with the Affiliate Program. You may terminate this Agreement at any time upon notification to the Company in writing.

Upon termination, you shall immediately cease all use of the Promotional Materials and all of the Company's intellectual property and will delete all copies of such materials in your possession. Furthermore, you shall immediately cease representing yourself as a participant in the Affiliate Program.

You shall be entitled to all validly accrued Commissions that have been earned prior to the termination of this Agreement.

## **Nature of The Relationship**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## **Disclaimers**

The Affiliate Program, any Promotional Material, and the products and services provided on connection therewith, are provided to Affiliate “as is.”

Except as expressly set forth in this Agreement, the Company expressly disclaims to the maximum extent allowed by law, all warranties, express implied, or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement, and any warranties arising out of course of dealing, usage, or trade.

The Company does not warrant that the Affiliate Program or Promotional Materials will meet Affiliate’s specific requirements or that the materials are error free or uninterrupted.

The Company expressly disclaims any liability for any act or omission of any third party provider not under the control of the Company, and their products and services.

Affiliate expressly agrees and understands that the Company has not made any guarantee that Affiliate will earn any specific amount of commissions and attests that no such representations or claims have been made.

### **Limitation of Liability**

You agree to absolve and do hereby absolve the Company of any and all liability or loss that you or any person or entity associated with you may suffer or incur as a result of participation in the Affiliate Program and/or any information and resources contained in the Affiliate Program. You agree that the Company shall not be liable to you for any type of damages, including direct, indirect, special, incidental, equitable, or consequential loss or damages for participation in the Affiliate Program.

To the maximum extent permitted by applicable law, in no event shall the Company be liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data, or profits arising out of or in any way connected with the use or performance of the Affiliate Program, with the delay or inability to use the Affiliate Program or related service, the

provision of or failure to provide services, or for any information, software, products, services, and related graphics obtained through the Affiliate Program, or otherwise arising out of the use of the Affiliate Program, whether based on contract, tort, negligence, strict liability, or otherwise, even if the Company or any of its suppliers has been advised of the possibility of damages. Because some States or other jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitations may not apply to You. If you are dissatisfied with the Affiliate Program or any portion of it, your sole and exclusive remedy is to terminate your participation in the Affiliate Program.

## **Arbitration**

You hereby expressly waive any and all claims you may have, now or in the future, arising out of or relating to the Affiliate Program.

To the extent that you attempt to assert any such claim, you hereby expressly agree to present such claim only through binding arbitration to occur in Fort Lauderdale, Florida. You further agree to and do hereby waive any right to class arbitration and agree, instead, to conduct an arbitration related solely to any individual claims you and/or any entity related to you asserts against the Company. To the fullest extent permissible by law, you further agree that you shall be responsible for all costs associated with initiating the arbitration and for the administration of the arbitration.

## **Choice of Law**

This Agreement shall be governed by and interpreted under the laws of Florida, without regard to any conflict of laws provisions.

## **Indemnification**

You agree to indemnify, defend, and hold harmless the Company, its officers, directors, employees, agents, and third parties for any losses, costs, liabilities, and expenses (including reasonable attorneys' fees) relating to or arising out of: (a) Affiliate's breach of any provision of this Agreement, including the representations and warranties, (b) any misuse, fraud, or deceptive conduct by Affiliate or any of its agents in connection with the Affiliate Program, and (c) any claims related to any promotional media created by Affiliate (excluding claims related to any Promotional Material provided by the Company).

The Company hereby agrees to indemnify, defend, and hold harmless Affiliate, its officers, directors, employees, agents, and third parties for any losses, costs, liabilities, and expenses (including reasonable attorneys' fees) relating to or arising out of an allegation that the Company does not

have the right to provide the Promotional Material or that the Promotional Materials violate a third-party's rights.

## **Modification**

The Company may modify this Agreement at any time by providing Affiliate with notification of the proposed changes by email at Affiliate's email address, but any such changes will not alter the Company's obligation to Affiliate with respect to any previously-earned commissions. Any such changes shall become effective ten (10) business days after such notice.

If the proposed modifications are unacceptable to you, you may terminate this agreement pursuant to the Termination clause above. Continued participation in the program shall constitute your acceptance of and agreement to the modification to this Agreement.

## **Entire Agreement**

This Agreement constitutes the entire agreement between You and the Company with respect to the Affiliate Program, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between You and the Company with respect to the Affiliate Program. A printed version of this Agreement and of any notice given in

electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

## **Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **Waiver**

No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.



## **Force Majeure**

The Company shall not be liable or responsible to You, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the Company including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.