

Stitcher Distribution & Provisional Partnership Agreement

The following constitutes an agreement (the “Terms of Distribution & Provisional Partnership”) between you, a content distributor or producer (subsequently referred to as “Producer”) and Stitcher, Inc (subsequently referred to as “Stitcher”) a Delaware corporation which operates its primarily place of business at 121 2nd Street, San Francisco, CA 94105, and provides a streaming media service (herein referred to as the “Service”) through which Producer desires to have its audio programming (“Submitted Content”) distributed.

By submitting the Content Producer Application (<http://stitcher.com/contentProviders.php>), and in consideration for Stitcher’s obligations set out herein, including the evaluation of Submitted Content, and the opportunity to have Submitted Content made available on Stitcher, Producer accepts, without limitation or qualification the terms and conditions of this agreement, and agrees to have Submitted Content distributed via the Service. If Producer does not agree to the terms outlined below, please DO NOT SUBMIT AN APPLICATION OR AUTHORIZE THE USE OF SUBMITTED CONTENT ON STITCHER. Producer’s continued use of Stitcher’s website evidences Producer’s agreement to be bound by each of the terms and Stitcher’s Privacy Policy and constitutes a legally binding contract between Producer and Stitcher. Stitcher respects the privacy concerns of our website users and future users. For information concerning the collection and use of information by Stitcher, please refer to our Privacy Policy.

I. Provisional Partnership Terms

- A. **Provisional Status & Partner Qualification:** Upon accepting the terms of this agreement and submitting the necessary materials required for Stitcher to distribute Submitted Content on the Service, the Producer shall be deemed a Provisional Partner. In order to qualify for Full Partner status and attain the benefits afforded to such Full Partners, a Producer must fulfill the following criteria (here in referred to as “Qualification Criteria”):
1. Producer shall continually maintain the production quality of the Submitted Content intended to be distributed through the Service at or above the level expected by a reasonable listener to similar types of audio programming. Production quality includes but is not limited to audio quality and update frequency.
 2. Producer shall provide promotional consideration to Stitcher as agreed upon between Producer and Stitcher at a time subsequent to Stitcher’s publication of Submitted Content on Stitcher and prior to the Producer qualifying for Full Partner status. Examples of such promotional consideration include but are not limited to on-air mentions of Stitcher, social media promotion and links from Producer’s website to Stitcher website.
- B. **Stitcher’s Partnership Obligations:** Upon Producer’s acceptance of the terms of this agreement and the submission of the Content Producer Application and/or Submitted Content, Stitcher agrees to the following:
1. Stitcher will evaluate each Content Producer Application and determine, at its sole discretion, whether the Submitted Content will be distributed on the Service.
 2. Should Stitcher decide to distribute the Submitted Content, Stitcher
 - i. shall perform the necessary processing of Submitted Content to allow that content to stream more effectively over the Service. Such processing may include reproducing Submitted Content on Stitcher’s servers. Stitcher will incur all cost associated with technology maintenance, enhancements to server storage, hosting, serving and processing.
 - ii. shall use commercially reasonable efforts to make Submitted Content available to as many users of the Service as possible.

- iii. shall provide Producer with reasonably detailed data regarding the use and distribution of Submitted Content. (e.g., number of users listening to content) through the Stitcher Partner Portal.
 - iv. shall, at regular intervals, review Producer's compliance with the Qualification Criteria and notify Producer's of successful qualification for Full Partner status. It shall be at Stitcher's sole discretion to determine a Content Producer's qualification for Full Partner status.
 - v. shall remove Submitted Content from the Service in accordance with Producer's right to remove Submitted Content as outlined in this agreement under Section III.
- C. **Notification of Qualification:** Within a 30 days after the time which Producer has satisfied the Qualification Criteria, Stitcher will notify Producer of such qualification and offer Full Partner status.

II. **Distribution of Submitted Content on Service**

- A. Stitcher acknowledges that Producer owns and/or controls the copyright in Submitted Content, subject to the rights that Producer grants to Stitcher hereunder.
- B. Producer hereby acknowledges that Producer is entirely responsible for everything contained in the Submitted Content made available by Producer on the Service.
- C. All Submitted Content that Producer submits to Stitcher including, without limitation, audio recordings, information, meta data, ideas, images, stories, characters, concepts, formats, themes, master recordings, musical compositions, comments, names, likeness, voice, suggestions or other materials submitted to Stitcher shall be subject to the applicable terms and conditions set forth herein.
- D. Solely in consideration of the possibility of distribution on the Service, to the extent that Submitted Content is owned and/or controlled by Producer, by uploading, posting, emailing or otherwise making available in any communications or Content Producer Application for the Service, Producer hereby grants to Stitcher a non-exclusive, royalty-free, and perpetual right to:
 - 1. Exhibit, display, reproduce, distribute and otherwise use Submitted Content, in whole or in part, via all media now known or hereafter devised, throughout the world in perpetuity (the "Distribution Rights");
 - 2. Exhibit excerpts of your Submitted Content via all forms of media throughout the world in perpetuity for promotional and/or advertising purposes ("Promotional Rights"); and,
 - 3. Create and use derivative works there from;
- E. With respect to any and all Submitted Material, Producer hereby warrants and represents that:
 - 1. Producer possesses all rights in the Submitted Materials necessary to permit Producer to make the grant of rights to Stitcher included this agreement and is duly authorized to do so.
 - 2. Submitted Content is not unlawful, obscene, fraudulent, indecent; does not defame, abuse, harass, or threaten others; and is not hateful or racially, ethnically or otherwise objectionable;
 - 3. Submitted Content does not contain any software viruses, Trojan horses, worms, bombs, or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information;

4. Submitted Content does not infringe the copyright, patent, trademark, trade secret, right of publicity or other intellectual property, proprietary, contracted, personal or other right of any third party;
 5. Submitted Content does not violate the privacy of individuals, including other users of the Site; or
 6. Submitted Content does not violate any applicable local, state, national or international law.
- F. Producer acknowledges that during the Provisional Term that Producer shall not be entitled to any monetary compensation in exchange for Producer's grant to Stitcher of the Distribution Rights or the Promotional Rights or Stitcher's subsequent exercise of those rights.
- G. Stitcher shall have no obligation to post, exhibit, distribute or otherwise make use of any Submitted Content.
- H. Any modification of these Terms of Distribution & Provisional Partnership must be in writing and signed by an authorized Stitcher signatory.
- III. **Removal of Content.** If Producer requests that any portion of the Submitted Content be deleted, replaced, or made inaccessible because such Submitted Content may contain errors, is or could be subject to a third party claim or for any other reasonable business purpose, then Stitcher shall remove the particular piece of Submitted Content as soon as practicable, but in any event by the end of two (2) business days following the receipt of such written notice. Stitcher may remove Submitted Content at any time and will alert Producer as to the removal. Requests for removal can be sent to copyright@stitcher.com.
- IV. **Stitcher's Intellectual Property Rights and Limited License.** All text, graphics, multimedia content or other material (such content being the "Materials") that can be heard or read on the Service, excepted for Submitted Content, is owned or being used with permission by Stitcher, and may not be used except as provided in these Terms of Distribution & Provisional Partnership.
- V. **Copyright and Trademarks**
- A. The Materials embodied in the Service are copyrighted under the United States copyright laws and/or similar laws of other jurisdictions. Without limitation, Stitcher either owns a copyright in the Materials including, without limitation, the selection, coordination, arrangement and enhancement thereof, as well as in the content original to Stitcher, or has been authorized to exploit the Materials on the Service.
- B. "Stitcher SmartRadio", the Stitcher logo, along with related marks that may appear on the Service ("Marks"), are the service and trademarks of Stitcher. All other trademarks, service marks and logos used on this Service, with or without attribution, are the trademarks, service marks or logos of their respective owners. Without Stitcher's written permission, Producer agrees not to display or use, in any manner, the Marks. In addition, elements of the Site are protected by trade dress and other federal and state intellectual property laws and may not be copied, reproduced, downloaded or distributed in any way, in whole or in part, without the written permission of Stitcher.
- VI. **Infringement Complaints - Digital Millennium Copyright Act Notice**
- A. Stitcher respects others' intellectual property rights and has made every effort to secure appropriate clearances for all proprietary intellectual properties that Stitcher affirmatively makes available on the Service. Further, Stitcher relies upon the obligations imposed upon users by these Terms of Distribution & Provisional Partnership to protect against the publication on the Service of infringing material by such users. Stitcher may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of Producer's who it suspects to be infringers. If Producer believes any material on the Service is infringing, please contact Stitcher at the address

below. Pursuant to the Digital Millennium Copyright Act, Stitcher has a designated agent to receive copyright infringement claims.

- B. Producer may notify Stitcher of alleged intellectual property rights infringement by contacting our designated DMCA Agent at:

Stitcher, Inc.
121 2nd Street
San Francisco, CA
94105

[Email: copyright@Stitcher.com](mailto:copyright@Stitcher.com)

DO NOT SEND ANY INQUIRIES UNRELATED TO POTENTIAL INFRINGEMENT OF RIGHTS OR OTHER LEGAL MATTERS (E.G., REQUESTS FOR TECHNICAL ASSISTANCE OR CUSTOMER SERVICE, ETC.) TO THE CONTACT LISTED ABOVE. PRODUCER WILL NOT RECEIVE A RESPONSE IF PRODUCER SENDS COMPLAINTS UNRELATED TO LEGAL MATTERS TO THAT CONTACT. All other correspondence should be left at our feedback page.

- C. If Producer's notification involves infringement of copyright or trademark rights, please include the following information in the notice:
1. Identification of the work(s) claimed to have been infringed and a statement of ownership to such work(s);
 2. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
 3. Information reasonably sufficient to permit us to contact a Producer representative, such as an address, telephone number and e-mail address at which Producer may be contacted;
 4. A statement that Producer has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law;
 5. A statement, under penalty of perjury, that the information in the notification is accurate and that Producer is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; and
 6. A physical or electronic signature.

VII. **Representations, Warranties and Indemnities.** Producer represents and warrants that:

- A. All information provided in your Content Producer Application is true, accurate, current and complete information about Producer as prompted by the Service's application form (such information being the "Application Data");
- B. Submitted Content will not infringe or violate any right whatsoever, including, without limitation, any contractual rights, personal rights (e.g., defamation, privacy, false light, moral right, etc.) or any property rights (e.g., copyright, trademark, etc.) of any person or entity;
- C. Submitted Content is not, and will not be, subject of any threatened or pending litigation, claim or dispute. Producer has not done anything which has impaired and will not do anything to impair the rights granted to Stitcher in any way;

- D. Stitcher shall have no obligation to make any payments to any third parties for exercising its rights to Submitted Content hereunder;
- E. You, as the representative of Producer, are an adult and at least 18 years of age, or that you have attained the age of majority under the laws of your state, province or country, and are capable of lawfully entering into and executing the Terms of Distribution & Provisional Partnership; and
- F. Producer will indemnify and hold harmless Stitcher, Inc and its subsidiaries, affiliates, successors, licensees, and assigns, and each of their directors, officers, agents, equity holders and employees, and each and every Stitcher sponsor and advertiser (individually and collectively referred to as the "Released Parties"), from and against any and all claims, losses, costs, damages, liabilities and costs and expenses (including reasonable attorneys' fees and costs) which arise out of any breach of any of Producer's covenants, agreements, obligations, representations or warranties set forth herein and/or arising out of or in connection with, any materials or Submitted Content that Producer submits, posts to or transmits to the Service, Producer's use of the Service, Producer's connection to the Service, Producer's violation of these Terms of Distribution & Provisional Partnership or Producer's violation of any rights of another party.

VIII. Miscellaneous.

- A. These Terms of Distribution & Provisional Partnership and their performance will be binding on Producer and Producer's heirs, administrators, successors and assigns. These Terms of Distribution & Provisional Partnership specifically apply to any submission of material that Producer makes to Stitcher by way of Content Producer Application or other means of communication and, with respect to such submissions, supersedes any other Terms of Distribution & Provisional Partnership applicable to the Service. The construction, validity, interpretation and enforceability of the Terms of Distribution & Provisional Partnership will be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice of law or conflict of law rules.
- B. These Terms of Distribution & Provisional Partnership will not be assignable by Producer except as approved in writing by Stitcher and any unauthorized, purported assignment will be null and void. Stitcher, and its successors and assigns, will have the unlimited right to assign these Terms of Distribution & Provisional Partnership and the rights granted at any time, in whole or in part, to any party.
- C. Producer irrevocably agrees that, if a dispute arises out of or relates to the Terms of Distribution & Provisional Partnership including, without limitation, Stitcher's use of Submitted Content, such dispute(s) will be resolved solely by binding arbitration before a sole arbitrator in San Francisco, with experience in entertainment law, under the rules and regulations of the American Arbitration Association ("AAA"). The arbitration will be held in San Francisco, California where the arbitrator will issue a written decision and will have the power to award any legal remedies except as limited by this agreement.
- D. Notwithstanding the foregoing, Producer acknowledges that Stitcher may:
 - 1. Obtain injunctive or other equitable relief from a court to enforce the provisions of these Terms of Distribution & Provisional Partnership; and/or
 - 2. Bring an action in court to protect or interpret any of Stitcher's purported intellectual property rights; and/or
 - 3. Bring an action to enforce the decision of the arbitrator before any court of competent jurisdiction.=
- E. Producer hereby acknowledges and agrees that by submitting Content Producer Application to www.stitcher.com, Producer has hereby agreed and shall be deemed to have executed the Terms of Distribution & Provisional Partnership as of the date the Content Producer Application was submitted online.

IX. **Limitations on Liabilities; Remedies.** PRODUCER UNDERSTANDS AND AGREES THAT:

- A. ANY AND ALL DISPUTES, CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR CONNECTED WITH SUBMITTED CONTENT WILL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION;
- B. ANY AND ALL CLAIMS, JUDGMENTS AND AWARDS ON BEHALF OF PRODUCER WILL BE LIMITED TO ACTUAL THIRD-PARTY, OUT-OF-POCKET COSTS INCURRED;
- C. THAT UNDER NO CIRCUMSTANCES WILL STITCHER, ITS AFFILIATES OR SUBSIDIARIES, THEIR SPONSORS, CONTRACTORS, SPONSORS, VENDORS OR OTHER PARTNERS, ANY OF THEIR SUCCESSORS, ASSIGNS OR LICENSEES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES (COLLECTIVELY "RELEASED PARTIES") BE RESPONSIBLE OR LIABLE TO PRODUCER OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING IN ANY WAY TO THE SERVICE, THE USE OR THE INABILITY TO USE THE SERVICE, UNAUTHORIZED ACCESS TO OR ALTERATION OF PRODUCER TRANSMISSIONS OR DATA, THE MATERIALS AVAILABLE ON THE SERVICE, STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR IN CONNECTION WITH THE SERVICE OR ANY OTHER MATTER RELATING TO THE SITE INFORMATION CONTAINED WITHIN THE SERVICE, EVEN IF ANY OF THESE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY DAMAGES.
- D. PRODUCER'S SOLE REMEDY FOR DISSATISFACTION WITH THE SERVICE AND/OR SERVICE-RELATED MATERIALS IS TO STOP DISTRIBUTING SUBMITTED CONTENT THROUGH THE SERVICE. PRODUCER AGREES THAT THIS LIMITATION OF LIABILITY AND RELEASE IS MADE WITH THE KNOWING INTENT OF RELEASING ALL KNOWN AND UNKNOWN CURRENT AND FUTURE CLAIMS AND WITH THE INTENT OF WAIVING ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542 OR OTHER LAWS REQUIRING SIMILAR WAIVERS TO BE KNOWINGLY MADE.

X. **Disclaimer of Warranties.** PRODUCER EXPRESSLY UNDERSTANDS AND AGREES THAT:

- A. PRODUCER'S USE OF THE SERVICE IS AT PRODUCER'S SOLE RISK. ANY CONTENT OR INFORMATION CONTAINED WITHIN THE SITE IS PROVIDED "AS IS" WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND.
- B. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, STITCHER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.
- C. PRODUCER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR PRODUCER'S USE OF THIS SERVICE AND ANY SERVICE-RELATED MATERIALS. IN ADDITION, STITCHER DOES NOT WARRANT THAT THE FUNCTIONS ON THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN OR ON THE SERVICE WILL BE CORRECTED, OR THAT THE SITE SERVICE OR THE SERVER THAT MAKES THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.
- D. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT PRODUCER'S OWN DISCRETION AND RISK AND PRODUCER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO PRODUCER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. UNDER NO CIRCUMSTANCES WILL STITCHER BE LIABLE IN ANY WAY FOR ANY MATERIAL, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS

OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY MATERIAL POSTED, EMAILED OR OTHERWISE TRANSMITTED VIA THE SERVICE.

- XI. **Severability.** If any provision of these Terms of Distribution & Provisional Partnership or the Privacy Policy are found to be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from the remainder, which will remain in force; the parties agree that the court should endeavor to give the fullest possible effect to the parties' intentions as reflected in the provision and shall not affect the validity and enforceability of any remaining provisions.
- XII. **Waiver.** Any delay or failure on the part of Stitcher to exercise or enforce any rights under these Terms of Distribution & Provisional Partnership to which it may be entitled shall not, in any event, be construed as a waiver of the right and privilege to do so at any subsequent time. Producer irrevocably agrees that Producer waives any and all rights to injunctive or other equitable relief.
- XIII. **Statute of Limitations.** Producer agrees that regardless of any statute or law to the contrary, any claim or cause of action, arising out of or related to, use of the Site or these Terms of Distribution & Provisional Partnership must be filed in a court of applicable jurisdiction within one (1) year after such claim or cause of action arose or be forever barred.
- XIV. **Entire Agreement; Modification and Termination.** Stitcher reserves the exclusive right to modify, withdraw, suspend or discontinue, temporarily or permanently, at any time and from time to time any materials, information or content available on the Partnership and any functionality or features in or on the Service, including the cessation of all activities associated with the Service, with or without notice. Producer agrees that Stitcher shall not be liable to Producer or to any third party for any modification, suspension or discontinuance of the Service.
- XV. **Termination**
- A. Stitcher may, in its sole discretion, terminate Producer's use of the Service for any reason, including, without limitation, if Stitcher believes that Producer has:
1. Breached these Terms of Distribution & Provisional Partnership or otherwise acted inappropriately;
 2. Infringed the intellectual property right of a third party;
 3. Provided any information that Stitcher is unable to verify or authenticate;
 4. Uploaded or transmitted unauthorized Submitted Content to the Service; and/or
 5. Violated or acted inconsistently with the letter or spirit of these Terms of Distribution & Provisional Partnership. Producer agrees that any termination of access to the Service may be effected without prior notice to Producer.
- B. Producer may at any time terminate use of the Service and request that that any or all Submitted Content be removed from distribution through the Service. Stitcher's obligation for removal is as defined in Section III of this agreement.
- XVI. **Stitcher reserves the right to change or modify these Terms of Use at any time. These Terms of Distribution & Provisional Partnership shall not be modified except in writing, as posted on this site by Stitcher. Any change or modification made by Stitcher will be effective immediately upon posting on the Site and Producer's continued use of the Site means that Producer has agreed to accept any changes or modifications made by Stitcher.**

Producer should therefore periodically visit this page to review the most recent Terms of Distribution & Provisional Partnership.

Effective Date

Last Revised: May 26, 2011