

# Shutterstock Affiliate Terms of Service

## AFFILIATE PROGRAM

Dear Applicant:

Shutterstock, Inc. ("Shutterstock", "we" or the equivalent) operates a stock media licensing service. Shutterstock's subscribers pay licensing fees to acquire and use content from the Shutterstock.com website. The following agreement ("Agreement") describes and controls your legal relationship with Shutterstock as a participant in our A Affiliate Program (the "Program"). Subscribers (those who license content from Shutterstock) referred to us by you pursuant to the Program are hereinafter collectively referred to as "Referrals."

PLEASE READ THE AGREEMENT CAREFULLY AND BE SURE YOU UNDERSTAND IT FULLY. BY APPLYING TO BECOME AN AFFILIATE YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT; THAT YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM; THAT YOU ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN THOSE SET FORTH IN THIS AGREEMENT; AND THAT YOU AGREE TO ALL OF ITS TERMS AND CONDITIONS.

SHUTTERSTOCK RESERVES THE RIGHT TO MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT AT ANY TIME AND TO NOTIFY YOU OF THE MODIFICATIONS BY AN ANNOUNCEMENT ON YOUR HOME PAGE. YOU AGREE TO BE BOUND BY ALL SUCH CHANGES. IF YOU DO NOT AGREE WITH ANY OF THE CHANGES, YOUR SOLE REMEDY IS TO TERMINATE YOUR PARTICIPATION IN THE PROGRAM.

### AGREEMENT

1. **Introduction:** This Agreement contains the complete terms and conditions that apply to an individual's or entity's participation in the Program. "Site" means a World Wide Web site and, depending on the context, refers to any site that you will link to our site (and which you will identify in your Program application). "Affiliate" means an applicant that has been approved by Shutterstock for participation in the Program. The acquisition of Subscribers is the purpose of the Program, and, in consideration of your referral to us of Subscribers pursuant to the terms and conditions of the Program, we shall compensate you as set forth below.
2. **Non-Exclusive Relationship:** Shutterstock reserves its right to enter into an agreement with any Affiliate and/or with any site other than your site, regardless of the relationship of the site to you or its content, or nature. You understand that we may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement or operate or endorse or promote websites and Affiliates that are similar to or compete with you and your web site(s). If you do not agree with the foregoing, your sole remedy is to terminate your participation in the Program.
3. **Enrollment in the Program:** To begin the enrollment process, you will submit a complete Program application via our site at <http://affiliate.shutterstock.com>. We will evaluate your application and will notify you of your acceptance or rejection. You should note that if we accept your application and if you or your site is thereafter determined (in our sole and unlimited discretion) to be unsuitable for the Program, we may terminate your participation in the Program. NOTWITHSTANDING ANYTHING STATED OR IMPLIED TO THE CONTRARY, BY APPLYING TO BECOME AN AFFILIATE, YOU AGREE THAT SHUTTERSTOCK HAS AND reserves the rights AT ALL TIMES to reject your application or terminate your participation in the Program for any reason, or no reason, in our sole and unlimited discretion.
4. **Incorporation By Reference:** The terms of Shutterstock's Affiliate Suitability Guidelines, Shutterstock.com's Website Terms of Use and the Privacy Statement for Shutterstock, Inc. are hereby deemed incorporated into and made a part of this Agreement by this reference. The failure by you or your site to adhere to the Affiliate Suitability Guidelines may result in the rejection of your application to participate in the Program or termination of your participation in the Program, in the sole and unlimited discretion of Shutterstock.
5. **Promotional Links:** Once you have been notified that your site has been accepted into the Program, you may use any method or form of promotion you choose so long as it complies with the terms and conditions of this Agreement (including but not limited to our Affiliate Suitability Guidelines) and all applicable laws. Promotional links may include our name and Trademarks (as defined below) and any other indicia and content we specifically identify on our site for your use as promotional features, tools and content (collectively, "Affiliate Promotional Links").
6. **Utilization of Affiliate Promotional Links:**
  - a. We hereby grant to you limited, non-exclusive, and non-transferable license to use our Affiliate Promotional Links for placement on your site without modification, abridgment, or embellishment, for the sole and exclusive purpose of referring potential Subscribers to Shutterstock. We reserve the right to revoke this license to use the

Affiliate Promotional Links, in whole or part, at any time.

- b. We reserve the right to require you to modify your use of the Affiliate Promotional Links following review of your site. If we issue formal policies and rules in connection with usage of the Affiliate Promotional Links, you agree to promptly conform your use of the Affiliate Promotional Links to said policies, as same may be amended from time to time.
- c. You may not use Affiliate Promotional Links to market, promote, or endorse the goods, services, and/or cause of any other individual or entity or to otherwise benefit any third party, save for your Referrals.
- d. You agree that you shall not bid on, register or purchase search engine keywords, domain names, or other identifying search terms or titles that are similar to the Trademarks owned or controlled by Shutterstock, or by any third party to promote your participation in the Program.
- e. In utilizing the Affiliate Promotional Links, you agree that you will cooperate fully with us in order to establish and maintain the consistency and integrity of such Affiliate Promotional Links as they may be modified, enhanced, expanded, curtailed or eliminated from time to time by us, in our sole and unlimited discretion.
- f. You acknowledge that, by participating in the Program and/or using any of the Affiliate Promotional Links, Shutterstock may receive information from or about visitors to your site to track Referrals.

7. Compensation:

- a. If you refer a subscriber to Shutterstock and the subscriber identifies you to Shutterstock as the referring party by clicking through your link to the Shutterstock website, your account will be credited as specified in the [Earnings Schedule](#). Any referrer fees credited to your account from a subscription or other product that is later refunded by or charged back to Shutterstock will be deemed to be an overpayment of fees to you. Shutterstock reserves the right to withhold payments due to you under the Program for up to 90 days from the date the referred Subscriber establishes a Shutterstock account.
- b. When a referred Subscriber clicks on your referral link, Shutterstock.com attempts to store a cookie on the referred party's web browser. A Subscriber must have an unexpired subscriber cookie in their browser when they complete their first purchase. If the cookies are not accepted or if they are removed or expired, the referred Subscriber will not be identified as your referral.
- c. If your account is cancelled for a breach of the material terms of this Agreement or any other agreement with us, in addition to its other rights at law or in equity, Shutterstock shall have the right to retain any fees, royalties and/or other compensation otherwise payable to you under this or any other agreement you may have entered into with us, as liquidated damages.
- d. If Shutterstock makes an overpayment of fees or other compensation to you for any reason, Shutterstock shall have the right to deduct the amount of such overpayment from your accrued fees and/or to require the immediate repayment of such overpaid fees or other compensation.
- e. Shutterstock may modify fee rates and/or payment schedules at any time and notify you by an announcement on your Home page of the modifications. If Shutterstock does modify the fee rate, fees earned before the effective change in rates will be credited at the rate in effect at the time such fees were earned.

8. Tax Compliance:

- a. You agree that you shall be solely responsible for the accurate and timely calculation, reporting and payment of any tax or other government revenue obligations or liabilities that arise from or are related to your participation in the Program, regardless of any reporting or other obligations we may bear by operation of law, or any performance of such obligations or lack of compliance thereof on our part.
- b. You agree that you shall comply in a timely manner with any of our reasonable or necessary requests for information, documents and/or data in connection with any of our taxation or similar responsibilities, and represent and warrant that all such information, documents and/or data shall be true and complete.
- c. If you are a "US Person" as said term is defined by the IRS, a signed and completed IRS form W9 must be submitted to Shutterstock for Shutterstock to make payments to you. You will receive an email containing instructions on how to download and submit this IRS form to us. A W9 is used to certify under penalties of perjury that your social security number is correct and that you are not subject to backup withholding taxes.

9. Term and Termination:

- a. The Term of this Agreement will begin upon our acceptance of your Program application and will end when terminated by either party. Either party may terminate this Agreement on written notice at any time, with or without cause. An announcement on your Home page shall be deemed written notice of termination by Shutterstock.
- b. Upon the termination of this Agreement for any reason, you will immediately cease use of, and remove from your site, all links to our site, all Trademarks and logos, together with all other materials provided by or on behalf of Shutterstock in connection with the Program. You will not earn referral fees on Referrals that occur after the Term.
- c. After Termination we may withhold your final payment under the Program for a reasonable time to ensure that the correct amount is paid and that you have ceased use of, and removed from your site(s), all Affiliate Promotional Links and are not in breach of this Agreement in any other respects.
- d. If your participation is terminated for cause, you must obtain written authorization from Shutterstock prior to applying for and establishing another Affiliate account. If you attempt (or someone on your behalf attempts) to establish another Affiliate account without obtaining such authorization, Shutterstock may permanently ban you from its website and its affiliated websites and services.

10. Shutterstock Trademarks:

- a. For the purposes of this Agreement, the term, "Trademark(s)" means all common law or registered trademarks, logos, service marks, trade names, Internet domain names, or other indications of origin now or in the future used by Shutterstock.
- b. Nothing contained herein grants or shall be construed to grant you any rights to use any Trademark, except as Affiliate Promotional Links placed on your site. You acknowledge that Shutterstock owns all right, title and interest in and to its Trademarks. Your use of the Affiliate Promotional Links shall conform to Shutterstock's then-current use policies and any additional usage guidelines provided by Shutterstock. Your use of any Affiliate Promotional Links and any goodwill associated therewith shall at all times inure to the benefit of Shutterstock.
- c. You agree that you will not use our Trademarks in any manner that might tarnish, disparage, or reflect adversely on such Trademarks or Shutterstock. Nor will you contest or otherwise challenge (e.g., in any legal action or otherwise), or assist or encourage any other person or entity to contest or challenge, the validity of any Trademarks or the Trademark rights claimed by Shutterstock.
- d. You agree that you will not use any Trademark or any variant thereof including misspellings) as a domain name or as part of a domain name regardless of the top-level domain, or as a metatag, keyword, or any other type of programming code or data, except pursuant to policies and rules issued by Shutterstock, if any, in connection with the Program.
- e. You may not at any time, adopt or use, without Shutterstock's prior written consent any word or mark which is similar to or likely to be confused with Shutterstock's Trademarks, except as Promotional Links placed on your site.
- f. The look and feel of the Shutterstock website, including all page headers, custom graphics, button icons, and scripts, is the trade dress and/or trademark or service mark of Shutterstock and may not be copied, imitated or used, in whole or in part, without the prior written consent of Shutterstock, except as Promotional Links placed on your site.
- g. You may not use a Trademark, logo, image or other proprietary graphic of Shutterstock to link to the Shutterstock website without the prior written consent of Shutterstock, except as Affiliate Promotional Links placed on your site and used in compliance with the terms of this Agreement.
- h. You may not frame or hotlink to the Shutterstock website or any image other than your own without the prior written consent of Shutterstock.
- i. You may not use any Trademarks to market, promote or endorse the goods and/or services or cause of any other individual or entity without our prior express permission in writing, signed by an authorized officer of Shutterstock.

11. Affiliate Representations and Warranties:

You warrant and represent as follows:

- a. You have the full right, power and authority to enter into this Agreement and to fully perform all of your obligations hereunder;
- b. You are under no legal disability or contractual restriction that prevents you from entering into this Agreement;
- c. The information and data submitted by you in connection with your application and participation in the Program and/or this Agreement is true, accurate and complete in all respects and shall in no manner mislead or deceive Shutterstock or any third parties.
- d. If your site contains content created by a third party or parties, you own or have acquired all rights to use such content from the owner of the copyright in same;
- e. The content of your site is neither obscene nor defamatory and does not infringe the copyright or any other rights of any third party, including, without limitation, trademark rights and the rights of privacy and publicity; and
- f. You and/or your site will not transmit unsolicited emails or engage in so-called "spamming" to publicize or promote your relationship with Shutterstock or to increase the number of your Referrals - nor will you advertise or otherwise publicize your relationship with Shutterstock through the use of pay per click search engine advertising or the like. This prohibition applies, by way of example and not by way of limitation, to Google Adwords, Yahoo! Search Marketing (previously Yahoo! Overture), MSN AdCenter, and Ask.com. You acknowledge that such advertising might infringe on the intellectual property rights of Shutterstock and/or third parties. In addition to its other rights and/or remedies under this agreement, Shutterstock shall be under no obligation to pay you any referral fees or other compensation if you violate the terms of this subparagraph.

12. Shutterstock's Representations and Warranties:

- a. Shutterstock has the power and authority to enter into this Agreement and to fully perform all of its obligations hereunder; and
- b. Upon making or learning of any claim that is inconsistent with any of the warranties or representations made by you, Shutterstock shall send you written notice of such claim, using the email address provided by you to Shutterstock, specifying the details of the claim as then known to Shutterstock. Pending the determination of such claim, Shutterstock may withhold from fees and/or other compensation due to you hereunder and any other agreement you entered into with us, such sums as are reasonably related to the probable value of the claim as determined by Shutterstock. You may participate in the defense of any claim through counsel of your selection at your own expense.

13. Disclaimers: Except as stated in paragraph 12 above, we make no express or implied warranties or representations with respect to Shutterstock.com any affiliated sites, the Program or any goods or services sold directly or indirectly through its sites (including, without limitation, warranties of fitness, merchantability, noninfringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, we make no representations or warranties that the operation and use of our site and the Program will be secure, uninterrupted or error-free, free of viruses or other harmful components or interfere with the operation and enjoyment of your site, and we will not be liable for the consequences of any interruptions or errors, viruses or other harmful components or interference with the operation and enjoyment of your site.

14. Indemnification: You shall indemnify and hold Shutterstock harmless from and against any and all claims, losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any breach or claimed breach of any of your representations or warranties or any of your obligations pursuant to this Agreement. Shutterstock shall indemnify and hold you harmless from and against any and all claims, losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any breach or claimed breach of any of Shutterstock's representations or warranties or any of Shutterstock's obligations pursuant to these Terms of Service, provided that, except in the case of third party claims, Shutterstock shall not be liable for any incidental, consequential, or special damages. In any case in which indemnification is sought as the result of a claim by a third party, the indemnified party shall: (i) promptly notify the indemnifying party of the claim (provided that the failure to do so shall not relieve the indemnifying party of its obligations hereunder except to the extent such failure to notify materially prejudices the indemnifying party); and (ii) afford the indemnifying party the opportunity of defending such claim and controlling the

litigation, settlement or other disposition of such claim (provided that any settlement shall require the indemnified party's consent). If the indemnifying party does not elect to defend such claim, then the indemnified party may do so at the indemnifying party's sole expense. The indemnified party may participate in any such action with its own counsel at its expense.

15. **Limitation of Liability:** Notwithstanding anything stated or implied to the contrary, Shutterstock, its officers, managers and members, shall not be liable for indirect, special, or consequential damages (or any loss of revenue, profits, goodwill or data) arising out of or related to this Agreement or the Program, even if we have been advised of the possibility of such damages. Further, our aggregate liability for actual damages (or any other damages not otherwise specified herein) arising out of or related to this Agreement and/or the Program will not exceed the total referral fees paid or payable to you under this Agreement in the preceding 12 month period from the earliest date that your claim arose, which date in any event shall be no later than the date you notify us of any claim.
16. **Miscellaneous:**
  - a. The relationship of the parties is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever. Neither party shall have the authority or power to bind the other or to contract in the name of or create a liability against the other in any way or for any purpose.
  - b. This Agreement: (i) contains the entire understanding of the parties with respect to the subject matter covered herein and supersedes any prior agreements with respect to such subject matter; (ii) shall be governed by the laws of the State of New York without regard to applicable conflicts of law provisions.
  - c. The parties agree that any disputes arising from this Agreement shall be resolved in the applicable courts of the State of New York, in New York County and agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available.
  - d. If any part of this Agreement is held void or unenforceable, such valid or unenforceable term or terms shall be modified solely to the extent necessary to make same enforceable. Under no circumstances shall a valid or unenforceable term affect the validity of the balance of this Agreement.
  - e. The failure on the part of Shutterstock to enforce your strict performance of any provisions of this Agreement and/or terms and conditions incorporated by reference will not constitute a waiver of the rights of Shutterstock to subsequently enforce such provisions or any other provision of this Agreement.
  - f. This agreement shall be binding upon and shall inure to the benefit of each party and their respective legal representatives, successors in interest and permitted assigns.
17. **Modifications:** Shutterstock reserves the right to modify these terms at any time and to notify you by an announcement on your login page of the modifications. You agree to be bound by all such changes.

BY APPLYING TO AND PARTICIPATING IN THE PROGRAM, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, SHUTTERSTOCK.COM'S WEBSITE TERMS OF USE AND THE TERMS AND CONDITIONS OF SHUTTERSTOCK'S PRIVACY STATEMENT (WHICH BY THIS REFERENCE ARE DEEMED INCORPORATED HEREIN), WITH THE SAME FORCE AND EFFECT AS IF YOU SIGNED SUCH DOCUMENTS BY HAND.

Effective: 31 Jan 2013

## **Affiliate Suitability Guidelines**

You and your site may be deemed unsuitable if:

1. You are involved, in whole or part, with any site that incorporates "Shutterstock" or variations or misspellings thereof in its domain name except under license from Shutterstock; or you use words and/or symbols that are Trademarks (as defined in the associated affiliate agreement), or substantially similar thereto, in any username, group name, or other identifier on any social networking website.
2. You engage in and/or facilitate spamming, indiscriminate advertising or unsolicited commercial email or otherwise fail to comply with the CAN-SPAM Act of 2003 (Public Law 108-187 or any successor legislation), and/or any other laws and/or regulations that govern email marketing and/or communications.

3. You engage in pop-up or pop-under advertising using any means involving third-party properties and/or services (software). Pop up/unders are acceptable on a first-party basis only when triggered by your site content, site visit or by downloadable software applications of which you are the owner/operator.
4. Your site's pop up/unders delivered through downloadable software engage in means that force clicks or perform redirects, or pop over a pay-per-click listing or natural search results.
5. Your reputation or that of your site(s) might in any manner tarnish, disparage, or reflect adversely on Shutterstock and/or its Trademarks or otherwise diminish our goodwill by reason of our association with you or your web site(s), including but not limited to your known involvement in, or promotion or facilitation of, activity that is unlawful, infringing, invasive, immoral, fraudulent, misleading, discriminatory, defamatory, obscene, abusive, violent or otherwise offensive.
6. Your site incorporates images, text or any other content or features (either displayed or hidden) that are unlawful, infringing, invasive, immoral, fraudulent, misleading, discriminatory, defamatory, obscene, abusive, violent or otherwise offensive and/or involves, advocates or facilitates activity that is unlawful, immoral, fraudulent, misleading, discriminatory, defamatory, obscene, abusive, violent or otherwise offensive.