

1. Warranties USE OF THE SERVICES IS AT CLIENT'S OWN RISK. THE SITE, THE SERVICES AND ALL PHOTOSHELTER CONTENT ARE PROVIDED BY PHOTOSHELTER ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT OSCAR & ASSOCIATES DOES NOT PROVIDE THE SERVICES AND TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES, ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SITE AND THE SERVICES (INCLUDING ALL CONTENT THEREON) AND CLIENT'S USE THEREOF, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, (A) OSCAR & ASSOCIATES DOES NOT REPRESENT OR WARRANT THAT THE SITE OR THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, BE FREE OF MALWARE, BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY ERRORS CAN OR WILL BE FIXED; AND (B) OSCAR & ASSOCIATES IS NOT RESPONSIBLE FOR, AND MAKES NO WARRANTIES WITH RESPECT TO, ANY THIRD PARTY CONTENT (INCLUDING, WITHOUT LIMITATION, THAT OF ANY CONTENT PROVIDER) CONTAINED ON THE SITE OR THE SERVICES OR THAT MAY BE LINKED TO THE SITE OR THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IN SUCH JURISDICTIONS, THE AFOREMENTIONED DISCLAIMERS MAY NOT APPLY TO CLIENT.
2. Limitation of liability OSCAR & ASSOCIATES WILL NOT BE LIABLE UNDER ANY SECTION OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REPUTATIONS), WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS IN ADVANCE. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST THE OTHER PARTY. IN NO EVENT WILL OSCAR & ASSOCIATES BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY END USER. IN ADDITION, IN NO EVENT WHATSOEVER SHALL OSCAR & ASSOCIATES' TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY RECEIVED BY OSCAR & ASSOCIATES FROM Client DURING THE SIX (6) MONTHS PRECEDING THE EVENT WHICH GAVE RISE TO SUCH OSCAR & ASSOCIATES LIABILITY.
3. Indemnification To the extent permissible by law, Client agrees to indemnify and hold harmless OSCAR & ASSOCIATES and its directors, officers, shareholders, employees or members from and against any and all allegations, third party claims, demands, suits, actions or other proceedings and any corresponding liabilities, costs, settlement amounts, expenses (including reasonable attorney's fees) or other losses paid to third parties arising from or relating to (i) Client's material breach of any of its representations or warranties set forth
4. Governing law This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Illinois, without regard to its conflict of laws rules.
5. Jurisdiction clause Each Party agrees to bring any action arising out of or related to this Agreement solely in a court of competent jurisdiction located in Cook county, Illinois and each Party irrevocably consents to such personal jurisdiction and waives all objections thereto.
6. Backup Although PhotoShelter uses industry standard methods to store and preserve Posted Content, it is always a best practice to backup all important data. Therefore, OSCAR & ASSOCIATES strongly encourages Client to perform regular backups of Client's Posted Content, and Client acknowledges and agrees that Oscar & Associates is not responsible or liable in any way for the failure to store, preserve or access Posted Content or other materials that Client transmits, stores, archives or otherwise makes available on or through the Services.
7. Assignment This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by Client without OSCAR & ASSOCIATES' written consent. However, without consent, either party may assign this Agreement to any successor to all or substantially all of its business which concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.
8. Severability If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
9. Waiver or Delay Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.