

## **TERMS OF SERVICE**

Please carefully review the following Terms of Service ("Terms") which govern your access and use of Phlipits, including any mobile applications and websites (the "Services"), and any videos, information, text, graphics, photos or other materials uploaded, downloaded or appearing on the Services (collectively referred to as "Content"). By accessing or using the Services and Content you agree to be bound by these Terms. Your use of the Services and Content is also governed by the [Phlipits Privacy Policy](#).

Phlipits may modify the Content, Services, and these Terms and the Privacy Policy at any time without notice, and it is your responsibility to review the modifications, because the modifications will be binding.

### **1. Your Account**

You must maintain the confidentiality of your account information, password, and any other credentials that you may use to access the Services. You also agree to accept responsibility for all activities or actions that occur under your account and password. Phlipits is not responsible for third party access to your account through theft or misappropriation, or your consent. You agree to immediately notify Phlipits of any unauthorized use of your account. Phlipits, in its sole discretion, may refuse or cancel service to anyone, terminate accounts, or remove, edit or suspend Content or the Services, at any time, without notice for any reason.

You may not:

- a) use a false name or an email address owned or controlled by another person with the intent to impersonate that person or for any other reason;
- b) use as a display name a name subject to any rights of a person other than yourself without appropriate authorization; or
- c) otherwise submit false or misleading information to Phlipits.

### **2. Services Available and General Use Restrictions**

Phlipits grants you a limited, personal, non-assignable, non-exclusive and non-transferable license to use the Services to create videos for your personal use. Commercial use of videos created using Phlipits Services is allowed provided you agree to explicitly acknowledge Phlipits' role in the creation of the videos, and retain any Phlipits logos or other attributing marks that are present in the Content. You acknowledge and agree that you have no right to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit the Services, Content and other materials in any manner.

These limited licenses terminate automatically, without notice to you, if you breach any of these Terms.

### **3. Age Restrictions**

If you are under 13 years of age, then please do not use or access the Phlipits Services at any time or in any manner.

### **4. Phlipits is NOT Confidential**

You agree that any Content that you provide will not be confidential and will be able to be viewed by other users of the Services and through third party services and websites.

## 5. Privacy

Please review the [Phlipits Privacy Policy](#), which explains how we use and disclose information that you submit or that we otherwise obtain.

## 6. Obligations and Restrictions on Content

You acknowledge and agree that you are responsible for your use of the Services, for any Content you submit, post, upload, or otherwise make available to the Services, and for any consequences of your use of the Services. This includes legality, reliability and appropriateness.

By making Content available to the Services, you represent and warrant that:

- 1) the downloading, copying, modification, and use of the Content will not infringe the copyright, patent, trademark, trade secret rights, or other proprietary rights of any third party;
- 2) the Content will not, in any way, harm, undermine or overload the operation of the Services (e.g., files that contain viruses, malware, malicious codes, corrupted files, or any other similar software);
- 3) the Content is not obscene, libelous or defamatory; hateful or racially, ethnically objectionable; harassing; and violative of the privacy or publicity rights of any third party; or generally contrary to legal and moral rights; and
- 4) the Content does not impersonate and is not intended to impersonate others in a manner that may mislead or confuse others.

Phlipits reserves the right (but will not have an obligation) to monitor Content and to remove or disable Content that Phlipits in good faith determines to be illegal, harmful or offensive, or which may create liability for Phlipits or its service providers, or that otherwise is in violation of these Terms or the policies of those of any third party service provider.

Phlipits does not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services. You understand that by using the Services, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive. Under no circumstances will Phlipits be liable in any way for any Content, 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 Content posted, emailed, transmitted or otherwise made available via the Services or broadcast elsewhere.

You understand that your Content may be syndicated, broadcast, distributed, or published by our partners. If you do not have the right to submit Content for such use, it may subject you to liability. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any Content that you submit.

## 7. Your Rights

You retain ownership of any Content you submit, post or display on or through the Services. In consideration for using the Services, you hereby grant Phlipits a non-exclusive, royalty-free, transferable license, with rights to sublicense, to use, copy, reproduce, display and distribute, perform, adapt, modify and create derivative works of your Content in any and all media or distribution methods (now known or later developed). Phlipits's ability to display Content may be subject to and controlled by the privacy settings that you select. To change your privacy settings on the Services, please change your profile setting. You understand that Content made available to the Services is "public" (i.e., not private and able to be viewed by others) by default unless you change the privacy settings. Once you have shared Content or made it public, that Content may be re-shared by others. If you remove information that you posted to the Service or change the privacy settings, copies may remain viewable in cached and archived pages of the Service, or if other users or third parties using the Services have copied or saved that information.

You understand that Phlipits is not responsible for Content posted or uploaded on third party websites and services, and such Content is subject to the terms of service and privacy policies of the third party websites and services.

Phlipits also reserve the right to access, read, preserve, and disclose any information (including, but not limited to, IP addresses and traffic information, usage history, and posted Content) as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Phlipits, its users and the public. Our right to disclose any such information will supersede any terms of the Privacy Policy.

## 8. Intellectual Property Infringement

Phlipits respects the intellectual property rights of others, and we ask you to do the same. Phlipits may, in appropriate circumstances and at our discretion, terminate access to the Services for users who infringe the intellectual property rights of others. If you believe that your work is the subject of copyright infringement and/or trademark infringement and appears on the Phlipits Services, please provide Phlipits' designated agent the following information:

- i. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- ii. Identification of the copyrighted and/or trademarked work claimed to have been infringed, or, if multiple works at a single online site are covered by a single notification, a representative list of such works at that site.
- iii. A specific 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 at on the Phlipits Services, and information reasonably sufficient to permit Phlipits to locate the material, such as webpage, title, or content identifier.

- iv. Information reasonably sufficient to permit Philipits to contact you as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- v. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright and/or trademark owner, its agent, or the law.
- vi. A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Philipits's agent for notice of claims of copyright or trademark infringement on the Services can be reached via email at the following address: [legal@phlipits.com](mailto:legal@phlipits.com).

## 9. Advertisements and Promotions; Third Party Products and Services

Philipits may run advertisements and promotions from third parties on the Services or may otherwise provide information or links to third party products or services. Your business dealings or correspondence with, or participation in promotions of our advertisers and any terms, conditions, warranties or representations associated with such dealings or promotions are solely between you and such third party. We are not responsible or liable for any loss or damage of any sort incurred as a result of any such dealings or promotions or as the result of the presence of such third party advertisers or third party information on the Services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

## 10. Disclaimers and Limitations of Liability

Please read this section carefully since it limits the liability of Philipits and its parents, subsidiaries, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors (collectively, the "Philipits Entities"). Each of the subsections below only applies up to the maximum extent permitted under applicable law.

### *A. Disclaimer of Warranties*

THE SERVICES, CONTENT AND ANY MATERIALS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS" OR "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES OR CONDITIONS OF ANY KIND.

WE MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE AVAILABILITY, RELIABILITY OR SECURITY OF THE SERVICES. WE DISCLAIM ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SERVICES AND CONTENT, INCLUDING, BUT NOT LIMITED TO:

(I) ANY AND ALL WARRANTIES OF MERCHANTABILITY;

(II) ANY AND ALL WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT WE KNEW, HAVE REASON TO KNOW, HAVE BEEN ADVISED, OR ARE OTHERWISE AWARE OF ANY SUCH PURPOSE);

(III) ANY AND ALL WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE; AND

(IV) THAT THE SERVICES AND ANY MATERIALS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SERVICES WILL OPERATE WITHOUT INTERRUPTION OR ERROR.

YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE RELIED ON NO WARRANTIES. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAILS OF THEIR ESSENTIAL PURPOSE.

#### *B. Limitation of Liability*

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PHILIPITS ENTITIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY.

PHILIPITS' LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE FEES, IF ANY, PAID BY YOU TO PHILIPITS UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT FIRST GIVING RISE TO THE CLAIM.

#### *C. Your Obligations*

You shall indemnify and hold harmless Philipits and its officers, directors, employees and agents (the "Philipits Indemnified Parties") from and against liabilities, costs, losses, damages, judgments, expenses (including attorneys' fees and costs of experts and costs of appeals) arising out or in connection with any and all of the following: (a) any allegation that any of your Content infringes, misappropriates or violates any intellectual property right, any rights of publicity or privacy; (b) any violation of these Terms; (c) your Content, including, without limitation, any claims for defamation or slander, invasion of privacy or other violation of a person's rights involving your content; (d) any activity relating to your account; or (e) any violation of a third party's contracts, policies or procedures by law.

### 11. General Terms

#### *A. Waiver and Severability*

The failure of Philipits to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. If any provision of these Terms is held invalid, that provision will be deemed amended to achieve as nearly as possible the same effect as the original provision and the remainder of these Terms will continue in full force and effect. The section headings

appearing in these Terms are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

*B. Controlling Law and Jurisdiction*

These Terms and any action related to them will be governed by the laws of Pennsylvania without giving effect to principles of conflict of laws of any jurisdiction. All claims, legal proceedings, and other hearings or actions arising in connection with these Terms, the Services and/or Content will be brought solely in the federal or state courts located in Allegheny County, Pennsylvania, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.