

LAST UPDATED: JULY 9, 2018

## THINGERY SHARING INC. - TERMS OF USE

### 1. AGREEMENT TO BE BOUND

These Terms of Use (these “**Terms**”), as amended from time to time, govern users’ (“**you**” or “**your**”) access and use of <http://thethingery.com/> (the “**Website**”), any Account (defined below) you use to access the Website, and the online products or services to which you have access therein (together, the “**Service**”) that are offered by Thingery Sharing Inc. (“**Thingery**”, “**we**”, “**our**” or “**us**”).

BY ACCESSING THE SERVICE, YOU HEREBY ACCEPT AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE DO NOT USE OR OTHERWISE ACCESS THE SERVICE.

### 2. PRIVACY POLICY

Use of the Service is also governed by our [Privacy Policy](#), which is incorporated herein by reference. Our Privacy Policy contains important information about how we collect, store and use your personal data and we encourage you to read the Privacy Policy carefully.

### 3. DESCRIPTION OF SERVICE

The Service includes information on the Website regarding the provision of innovative and convenient access to, and borrowing of, tools, equipment, and other household goods, located in various localized equipment lending libraries operated by community co-ops, which facilitate more resilient, environmentally friendly, and closely knit communities (“**Thingery Co-Ops**”). The Service also includes third-party enabled applications to become members of Thingery Co-Ops; third-party enabled applications to donate items to Thingery Co-Ops; and third-party enabled applications to start a new Thingery Co-Op.

### 4. CONTENT RIGHTS & GRANT OF LICENSE

We (and our licensors) own all legal right, title and interest (including all copyright and other intellectual property rights) in and to the Service, including, without limitation, all software comprising a part of the Service that is hosted on our servers and all materials displayed or performed on the Website or in the Service, including, but not limited to, text, graphics, articles, photographs, images, illustrations (together, the “**Content**”).

Subject to your agreement and continuing compliance with these Terms, we grant you a non-exclusive, non-transferable, non-sublicenceable and revocable limited licence to the Content to access and use the Service **and to create and use an account on the Service (“Account”)** solely for your own personal purposes to provide services to your end customers.

You shall use the Service only in compliance with our standard policies then in effect and all applicable laws (including but not limited to policies and laws related to spamming, privacy, intellectual property, consumer and child protection, obscenity and defamation).

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You shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, hardware, server, software, operating system, networking, web servers and web services (collectively, the "**Equipment**"). You shall be responsible for ensuring that such Equipment and services are compatible with the Service and comply with all configurations and specifications set forth in our published policies then in effect. You shall also be responsible for maintaining the security of the Equipment, your Account, ancillary services, passwords (including but not limited to administrative and user passwords) and files, and for all uses of your Account, the Service or the Equipment with or without your knowledge or consent.

You shall not:

- a) have more than one Account at any given time, and you shall not create an Account using a false identity or information, or on behalf of someone other than yourself;
- b) use your Account to transmit unauthorized communications, advertise, solicit, or transmit any commercial advertisements, including chain letters, junk email or repetitive messages (SPIM and SPAM) to anyone;
- c) collect, harvest or post anyone's private information, including personally identifiable information of any kind through the Service;
- d) use the Service in a manner that infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party;
- e) use the Service, intentionally or unintentionally, in violation of any applicable law or regulation;
- f) use, reuse, repost, distribute, provide access to others to, copy, modify, or transmit the Service and related information for any commercial purpose or for public use;
- g) attempt to gain access to the Service, Accounts registered to others or to the computers, servers, or networks connected to the Service by any means other than the user interface provided by us and through your Account, including but not limited to, by circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device, server or software that is part of the Service;
- h) interfere or attempt to interfere with the proper functioning of the Service or connect to or use the Service in any way not expressly permitted by these Terms; or
- i) reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying software or other intellectual property used to provide the Service, or to obtain any information from the Service using any method not expressly permitted by us.

## **5. CHANGES TO THE SERVICE**

We may change, suspend or discontinue the Service at any time, including the availability of any feature, database, or Content by giving you advanced notice of such termination either (at our discretion) via email or posted on the Service. We also reserve the right to establish limits to the nature or size of any index or library

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information, the nature of, or your continued ability to access or distribute, your Content and other data, and impose other limitations at any time, with or without notice.

## **6. ACCOUNT INFORMATION**

When creating or updating an Account, you may be required to provide us, the Thingery Co-Ops, and our licensors with certain personal information (the "Login Information") which will be held and used in accordance with our Privacy Policy and the privacy policies of the Thingery Co-Ops (if any) and our licensors (as applicable).

In addition to any rules set out by Thingery Co-Ops or any licensors, the following rules govern the security of your Login Information:

- a) you will not share your Login Information, let anyone else access your Account, or do anything else that might jeopardize the security of your Account;
- b) you are required to provide accurate Account information and update that information promptly after it changes;
- c) in the event you become aware of or reasonably suspect any breach of security, including without limitation any loss, theft, or unauthorized disclosure of your Login Information, you must immediately notify us and modify your Login Information; and
- d) you are responsible for maintaining the accuracy, completeness and confidentiality of your Login Information, and you will be responsible for all activities that occur under your Account, including activities of others to whom you have provided your Login Information. We will not be liable for any loss or damage arising from your failure to provide us with accurate information or to keep your Login Information secure. If you discover any unauthorized use of your Login Information or suspect that anyone may be able to access Your Content (defined below), you should immediately change your password and notify our Customer Support team.

## **7. USER CONTENT AND FEEDBACK**

You agree that by providing content, materials or information (including, without limitation, information relating to your end user customers) in connection with your use of the Service (collectively, "**Your Content**"), you hereby grant to us a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, sub-licenceable and transferable right to use, process, store, copy, display, perform, distribute, reproduce, reformat, translate, modify and create derivative works of Your Content (including all related intellectual property rights) solely in connection with our provision of the Service. For clarity, the foregoing licence grant does not affect your ownership of or right to grant additional licenses to Your Content.

At times, you may be given the opportunity to submit questions, comments or other information about the Service or otherwise to us ("**Feedback**"). You will and do hereby grant to us a fully paid-up, royalty free, perpetual, irrevocable, non-exclusive, worldwide, fully transferable and sub-licensable licence to use, enhance, develop, copy, modify and make derivative works of the Feedback and to make, use, sell, offer for sale and import any products or services based on the Feedback.

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## **8. LINKS TO THIRD-PARTY SITES**

The Service may include hyperlinks to web sites operated by third parties including advertisers, licensors, and other content providers. Those sites may collect data or solicit personal information from you. We do not control such web sites, and are not responsible for their content, privacy policies, or for the collection, use or disclosure of any information those sites may collect.

## **9. TERM AND TERMINATION OF SERVICE**

The term of the Service begins on the date you create an Account or access the Service and continues until terminated as contemplated below.

We may immediately terminate your access to the Service (and/or any portion thereof) for violation of these Terms, for illegal or improper use of the Service, Your Content, your Account or our intellectual property, as determined by us. In this event, we may alternatively issue you a warning, suspend your Account, or temporarily or permanently ban your device and/or machine from accessing all or a certain Service.

If we terminate your Account, you may not participate in the Service again without our express permission. We reserve the right to refuse to keep an account for, or provide the Service to, any individual. You may not allow individuals whose Accounts have been terminated by us to use your Account.

If your Account or any other subscription to the Service is terminated, suspended or cancelled, your data and personal information may be retained by us for a reasonable amount of time or as required pursuant to applicable law, or destroyed in our sole discretion acting reasonably.

If your Account, or any other subscription to the Service is terminated or suspended, no refund will be granted and you will have no further access to your Account or the particular Service. If you believe that any action has been taken against your Account or device in error, please contact Customer Support at [info@thethingery.com](mailto:info@thethingery.com)

## **10. CANCELLATION OF ACCOUNT**

You have the right to cancel your Account at any time. If you do not agree to the Terms, your sole remedy is to not use the Service and to cancel your Account.

You understand and agree that the cancellation of your Account is your sole right and remedy with respect to any dispute with us, including any dispute related to, or arising out of: (1) these Terms or our enforcement or application of these Terms; (2) the Service or any change thereto; (3) your ability to access and/or use the Service; or (4) the amount or type of fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods for the Service.

Contact us Customer Support at [info@thethingery.com](mailto:info@thethingery.com) to cancel your Account. We reserve the right to collect fees, surcharges or costs incurred before you cancel your Account. Any delinquent Account, unpaid fees and other unresolved issues with Service must be settled before you establish a new Account.

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## **11. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK AND IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY CONDITION OF DURABILITY, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE FOREGOING, NEITHER US OR OUR AFFILIATES OR SUBSIDIARIES, OR ANY OF OUR RESPECTIVE DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, THIRD-PARTY CONTENT PROVIDERS, DISTRIBUTORS, LICENSEES OR LICENSORS WARRANT THAT (i) THE SERVICE WILL MEET ALL OF YOUR REQUIREMENTS; (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (iii) ALL ERRORS IN THE SERVICE OR ITS SOFTWARE WILL BE CORRECTED.

## **12. LIMITATIONS; WAIVERS OF LIABILITY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE, OUR SUBSIDIARIES, AFFILIATES AND LICENSORS, AND OUR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND SUCCESSORS (COLLECTIVELY, THE "**COMPANY PARTIES**") SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, COVER OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, PRODUCTS, DATA, INFORMATION OR SERVICE PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR THE LOSS, CORRUPTION OR ALTERATION OF YOUR TRANSMISSIONS, CONTENT OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR USING THE SERVICE, OR PROVIDING ANY SERVICES RELATED TO THE OPERATION OF THE SERVICE ; (v) OUR ACTIONS OR OMISSIONS IN RELIANCE UPON YOUR ACCOUNT INFORMATION AND ANY CHANGES THERETO OR NOTICES RECEIVED THEREFROM; (vi) YOUR FAILURE TO PROTECT THE CONFIDENTIALITY OF ANY PASSWORDS OR ACCESS RIGHTS TO YOUR ACCOUNT INFORMATION; (vii) THE ACTS OR OMISSIONS OF ANY THIRD PARTY USING OR INTEGRATING WITH THE SERVICE;(viii) THE TERMINATION OF YOUR ACCOUNT IN ACCORDANCE WITH THE TERMS OF THESE TERMS; OR (viii) ANY OTHER MATTER RELATING TO THE SERVICE.

OUR MAXIMUM LIABILITY ARISING OUT OF OR IN THE CONNECTION WITH THESE TERMS AND ANY USE OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL IN NO CASE EXCEED THE GREATER OF (i) FEES PAID BY YOU FOR THE PREVIOUS 12 MONTHS, AND (ii) \$100.00.

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SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### **13. RELEASE & INDEMNIFICATION**

You agree to indemnify, save, and hold the Company Parties harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Service, violation of these Terms, or breach of the representations, warranties, and covenants made by you herein. We reserve the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defence of these claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

### **14. GENERAL PROVISIONS**

#### **18.1 Updates to the Terms**

We reserve the right to modify these Terms at any time in our sole discretion. We may provide you with notice of such modifications, by sending you an email message or public posting on or via the Website. Your continued use of the Service will signify your acceptance of the modifications to the Terms.

**[NOTE: In order to ensure the Terms are enforceable, and provide adequate liability protection to Thingery, any significant changes should be accompanied by notice by email or publication to the Website. As a best practice, notice should be given of any amendment and consent to such amendments should be obtained prior to user access to the Service.]**

#### **18.2 Entire Agreement**

These Terms, any supplemental policies and any documents expressly incorporated by reference herein (including our Privacy Policy), contain the entire understanding of you and us with respect to the Service, and supersede all prior understandings of the parties hereto relating to the subject matter hereof, whether electronic, oral or written, or whether established by custom, practice, policy or precedent, between you and us with respect to the Service.

#### **18.3 Governing Law, Dispute Resolution and Forum for Legal Disputes**

These Terms and any dispute arising out of or related to it or the Service will be governed in all respects by the laws of the Province of British Columbia as they apply to agreements entered into and to be performed entirely within British Columbia between British Columbia residents, without regard to conflict of law provisions.

You agree to attempt to resolve any dispute arising under the Terms by mutual agreement. Failure to attempt to mutually resolve any dispute resulting under the Terms will constitute a breach of the Terms.

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You agree that any claim or dispute you may have against us must be resolved exclusively by a court located in Vancouver, British Columbia. You agree to submit to the personal jurisdiction of the courts located within Vancouver, British Columbia for the purpose of litigating all such claims or disputes.

#### **18.4 Waiver and Severability**

Any failure by us to exercise or enforce any right or provision of these Terms or any of our policies shall not constitute a waiver of such right or provision. If any portion of these Terms or any other of our policies is found illegal or unenforceable, in whole or in part by any court of competent jurisdiction, such provision shall, as to such jurisdiction, be ineffective solely to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of the Terms, which shall continue to be in full force and effect.

#### **18.5 Notices**

We may notify you via postings on the Service and via email or by any other communication means using the contact information you provide to us. All notices given by you or required from you under these Terms or our Privacy Policy shall be in writing and addressed to: [info@thethingery.com](mailto:info@thethingery.com). Any notices that you provide without compliance with this section 18.5 will have no legal effect.

#### **18.6 Limitation of Claim**

You agree 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 Service or these Terms must be filed within one year after such claim or cause of action arose or be forever barred.

#### **18.7 Limitation of Claim**

Both parties agree that there will be no favouritism in construction of the Terms, and that any ambiguity in the Terms will be resolved without preferential regard to one party or the other.