



November 12, 2018

THIS USER AGREEMENT (“AGREEMENT” OR “TERMS OF SERVICE”) GOVERN YOUR USE OF THE THUMBSTOPPER SUBSCRIPTION SERVICES (“SERVICES”) MADE AVAILABLE THROUGH THIS WEBSITE (“SITE”). THE TERMS “THUMBSTOPPER,” “WE,” AND “US” REFER TO THUMBSTOPPER, LLC.

ThumbStopper was formed in October 2018 and is an affiliate of and has been assigned certain rights and assets from LotVantage LLC. If you have a question about this User Agreement / Terms of Service, please contact us by sending email to [accounting@ThumbStopper.com](mailto:accounting@ThumbStopper.com).

## 1. Acceptance of and Changes to the Terms of Service

By using our Service, you agree to these Terms of Service. If you do not agree, you must not register for or use any of our Services. We may amend these Terms of Service at any time. Any modifications to these Terms of Service will be effective when posted on the Site. Your continued use of the Services will signify your acceptance of the modified Terms of Service. If you do not agree to the changes, you must discontinue your use of the Services and cancel your subscription to the Services by visiting the website [thumbstopper.com/cancel](http://thumbstopper.com/cancel) and submitting the Cancellation Request. Throughout these Terms of Service, (a) the phrase “in our discretion” or “in its discretion” means in ThumbStopper’s sole and arbitrary discretion and (b) the term “including” means including without limitation.

## 2. ThumbStopper Terminology

We use capitalization for terms that have a special meaning in this Agreement. While some terms are defined elsewhere, this section sets out the definitions of some key terms.

“**Content**” is a generic term that means all information and data (such as text, images, photos, videos, audio and documents) in any format that is uploaded to, downloaded from or appears on our Self-Serve Services.

“**Customer Content**” is Content that you or your Authorized Users provide to us, or upload to our Self-Serve Services.

“**Mentions**” are the Content that a third party (in other words, someone other than you, your Authorized Users or ThumbStopper) creates and that we obtain on your behalf and at your instruction from Social Networks or other Third-Party Services that you connect to our Self-Serve Services. For example, posts created by your followers that appear on your Facebook page would be considered Mentions.

“**Services**” means our websites, such as [www.ThumbStopper.com](http://www.ThumbStopper.com) (and all its current and future subdomains), and mobile applications, and any services that you access or purchase through our websites or mobile applications, but do not include Third-Party Services (see below for how we define those) that you access or use in connection with our services.

“**Third-Party Services**” are services that are not provided by ThumbStopper but that you may access or use in connection with our Self-Serve Services. They include the “Social Networks”, which are the social networking sites supported by our Self-Serve Services (such as Twitter, Facebook, and Instagram), as well as other Third Party Services as listed on the ThumbStopper website ([www.ThumbStopper.com](http://www.ThumbStopper.com)).

“you”, “your”, “Customer”, and similar terms mean the person or legal entity accessing or using the Self-Serve Services. For the avoidance of doubt, if you are accessing and using the Self-Serve Services on behalf of a company (such as your employer) or other legal entity, “you”, “your” or “Customer” means the company or other legal entity that you are using the Services on behalf of.



### **3. Eligibility; Registration**

#### **3.1 Eligibility**

Use of the Services is limited to users who are 18 years of age or older. By accepting these Terms of Service, you represent that you are (a) 18 years of age or older and, if applicable, (b) you are authorized to sign for and bind the company on behalf of whom you are using the Services.

#### **3.2 Registration**

You must register on this Site to use the Services. You may be asked to provide the following information during registration: your personal or company information, billing information, company logo, your administration login name, email address, and a password for accessing the Services. You may also be asked to provide authorizations to your accounts on 3<sup>rd</sup> party websites to utilize the ThumbStopper software and service.

#### **3.3 Passwords and Security**

You will at all times maintain the confidentiality of your user names and passwords. If you are a corporation, partnership or other legal entity, you are responsible for all activity and all charges by such employees. If there is a breach of security through your account, you must immediately change your password and notify us at [support@ThumbStopper.com](mailto:support@ThumbStopper.com). You will be liable for any unauthorized use of the Services until you notify us of the security breach.

#### **3.4 Accurate and Complete Information**

You will provide to ThumbStopper only true, accurate, current and complete information and will update that information to ensure that it remains true, accurate, current and complete. ThumbStopper, its agents, suppliers, and subcontractors have the right to recover from you any costs or losses incurred as a direct or indirect result of any inaccurate or incomplete information you provide through the Site.

### **4. Website and Services**

#### **4.1 Use of the Site and Services**

You may use the Site only for lawful purposes and in accordance with these Terms of Service. You shall use the Services solely for the purpose of marketing, listing and selling your goods and/or services online. You will not use the Service to send any (a) communications that include defamatory, libelous, unlawfully threatening or harassing statements or any material that would violate the letter or spirit of these Terms of Service, or (b) unsolicited commercial email or spam. If we reasonably believe that you have breached the Terms of Service or any applicable law, we may, at any time and without notice, remove any of your Content and suspend, restrict or terminate your account or your access to the Services.

#### **4.2 Right to Refuse Services**

Subject to this Agreement, we will allow you and your Authorized Users to access and use our Services in the way set out in the plan you subscribed to. You may not use or access the Services in any other way, such as using robots, spiders, crawlers and scraping technologies.

ThumbStopper may refuse the Services to anyone at any time, in our discretion. ThumbStopper reserves the right to discontinue, temporarily or permanently, any or all of the Services to anyone at any time, with or without notice. ThumbStopper will refund you any amounts that you have prepaid for the Service that ThumbStopper refuses to provide. ThumbStopper shall not be liable to you or any third-party for any termination of your access to the Services.



#### **4.3 Changes**

We may change our Services, such as by changing, adding or removing features at any time, for any reason. We may or may not provide notice of those changes to you. We will not be liable to you or any third party for the modification, price change, suspension or discontinuance of any of our Services.

Our Services interact with Social Networks and depend on the availability of those Social Networks and the features and functionality they make available to us, which we do not control and may change without notice. If at any time a Social Network stops making some or all of its features or functionality available to us, or available to us on reasonable terms as determined by ThumbStopper in its sole discretion (each an "API Change"), we may stop providing access to those features or functionality and we will not be liable to you or any third party for any such change.

#### **4.4 Customer Content**

You are solely responsible for Customer Content. We may, but do not have to, review, filter, block or remove Content, including Customer Content.

#### **4.5 Submitted Content**

If you use the Services for contests or otherwise ask persons to submit Content through the Services ("Submitted Content"), you acknowledge and agree that (a) the Services do not help you comply with any laws, rules, or regulations that may apply to your collection or use of any Submitted Content, which is solely your responsibility; and (b) ThumbStopper will not be liable to you or any third party for the Submitted Content, and we make no warranty that any Submitted Content obtained or displayed through the Services is accurate or complete.

#### **4.6 License to Your Information**

You grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to use any information you provide us for the purpose of providing the Services to you.

#### **4.7 Account Information**

You are responsible for the completeness, security, confidentiality and accuracy of the account information you provide to us. You will promptly notify us of any unauthorized access to or use of your log-in credentials or account.

#### **4.8 Content and Third-Party Services**

We are not responsible for Content provided by others, including Mentions and Content from Third-Party Services (such as Content from Social Networks and Content in apps from the App Directory). You and anyone else who accesses our Services may access Content that might be unlawful, offensive, harmful, inaccurate or otherwise inappropriate. We will not be liable to you or any third party for Content provided by others.

If you access or purchase a Third-Party Service through our Services, you do so at your own risk. Your relationship with the Third-Party Service provider is an agreement between you and them. You specifically understand that we are not responsible for Third-Party Services and will not be liable to you or any third party for any losses or damages resulting from your use of Third-Party Services.

If you access or enable a Third-Party Service, you grant them permission to access or otherwise process your data as required for the operation of the Third-Party Service. We are not responsible for disclosure, use, change to or deletion of your data and will not be liable to you or any third party for access to your data by a Third-Party Service.



We may, but do not have to, preview, verify, flag, modify, filter, block or remove Third-Party Services. You must comply with all agreements and other legal requirements that apply to Third-Party Services.

#### **4.9 Data Protection and the EU General Data Protection Regulation**

If your use of our Services includes processing Content that contains “personal data” that is subject to the General Data Protection Regulation (EU) 2016/679, we offer European Model Clauses, also known as Standard Contractual Clauses, to meet adequacy and security requirements for our customers who operate in the E.U. Please review our [Privacy Policy](#) for more information on how we collect and use data relating to the use and performance of our Services.

#### **4.10 Privacy**

ThumbStopper will only use your information in accordance with our [Privacy Policy](#) and you consent to all actions we take with respect to your information in accordance with our [Privacy Policy](#). Our [Privacy Policy](#) is incorporated into these Terms of Service by reference.

#### **4.11 Consumer Data**

As between you and ThumbStopper, all consumer data gathered about and/or provided by visitors and viewers of ThumbStopper’s classified advertising is the exclusive property of ThumbStopper. You may use, on a non-exclusive basis, certain portions of this data submitted by consumer inquiries directly related to the sale of your goods and/or services within the ThumbStopper software.

#### **4.12 Limited Agency**

You authorize ThumbStopper to access third-party marketplaces on your behalf to retrieve and post information and materials necessary to provide the Services to you, and you hereby appoint ThumbStopper as your agent for this limited purpose. You permit ThumbStopper to use such retrieved information and materials to accomplish the foregoing, and to communicate with consumers on your behalf. You acknowledge that the Services may or may not provide all the information and functionality that you could obtain directly from such third-party marketplaces.

#### **4.13 Electronic Communications**

When you visit the Site or send emails to us, you are communicating with us electronically. By doing so, you thereby consent to receive communications from us electronically. You may elect to receive periodic email or SMS text messages from us with information related to the Services. We will not be liable for any delays in the receipt of any email or SMS text messages as delivery is subject to effective transmission from your mobile service carrier.

At any time, you can follow a link provided in our email messages (except for e-commerce confirmation or service notice emails) received from us to unsubscribe from the service, or you can contact us at [Legal@ThumbStopper.com](mailto:Legal@ThumbStopper.com). For SMS text messages, message and data rates may apply. Please contact your carrier for more details. It is your sole responsibility to check with your mobile service carrier for any charges that may apply. ThumbStopper assumes no responsibility for any charges you incur due to your election to receive SMS text messages related to the Services. To stop receiving our text messages at any time, reply with text “STOP” to any message.

Data obtained from you in connection with this SMS service may include your cell phone number, your carrier’s name and the date, time and content of your messages. For additional information regarding ThumbStopper’s use of information collected in connection with the program, please refer to our [Privacy Policy](#).

ThumbStopper text message program is available on most major wireless carriers including, including but not limited to AT&T, Boost Mobile, Sprint, T-Mobile and Verizon mobile phones.



#### **4.14 General Compliance with Laws**

You will comply with all applicable laws, statutes, ordinances and regulations in your use of the Services.

### **5. Fees**

#### **5.1 Fees Policy**

Unless otherwise stated, all fees are quoted in U.S. Dollars. ThumbStopper will charge you subscription fees for the Service in accordance with the ThumbStopper Fees Policy. You are responsible for paying all fees associated with using our Services, including fees charged by third-party marketplaces and all applicable taxes. Classified Communication services include up to 1,000 voice minutes and up to 2,500 SMS texts per month and additional usage will be subject to fees.

#### **5.2 Changes to Fees**

ThumbStopper may change the Fees Policy at any time and will become effective seven days after those changes have been posted on the Site and may add new fees effective immediately upon posting on the Site.

#### **5.3 Billing**

You will be required to provide ThumbStopper with your credit card information or PayPal account or bank account information. Your credit card or PayPal account or bank account will be charged on the first day of each month for the subscription fees until your account is canceled. You are required to provide at least a 60-day notice of cancellation. You may request cancellation at any time by visiting the website [thumbstopper.com/cancel](http://thumbstopper.com/cancel) and submitting the Cancellation Request. Upon cancellation, any unused software fees or ad spend will revert to ThumbStopper as a termination fee. Your cancellation will become effective upon your receipt of an e-mail from ThumbStopper acknowledging the cancellation. If you do not receive an acknowledgement e-mail, you must call ThumbStopper at 813-470-7094 to notify ThumbStopper of cancellation and an acknowledgement e-mail will be sent thereafter.

Unless otherwise stated, if your invoice is not paid within five (5) days of the invoice date, ThumbStopper, in its sole discretion, may immediately terminate access to the Services. You will be billed a monthly finance charge of the lower of 1.5% or the highest amount permitted by applicable law if your account becomes past due. You will reimburse ThumbStopper for any costs arising from any collection activity.

#### **5.4 Discounts, Credits and Refunds**

ThumbStopper may, in its discretion, offer discounts, coupons or promotions that may reduce applicable fees. You may request a credit to your account by contacting ThumbStopper customer service. Credits will be granted in ThumbStopper's discretion. Any refunds will be made in credits to your ThumbStopper account. You will not be entitled to a refund in the event of any cancellation event, even if you have not used the Services.

#### **5.5 Reconnection**

ThumbStopper reserves the right to charge a \$49.99 reconnection fee as a result of your account being terminated after a thirty (30) day nonpayment event.

#### **5.6 Domain Names**

From time to time, ThumbStopper may obtain one or more domain names in connection with providing you with the Service. The domain names are the exclusive property of ThumbStopper. You may purchase the domain name from ThumbStopper for \$500 if your account is in good standing.



## **6. ThumbStopper Content**

### **6.1 Terms**

As between you and ThumbStopper, any content made available by ThumbStopper, including data provided by consumers and prospects in response to social media marketing and/or classified ads for your goods and services (collectively, "Content") belongs to ThumbStopper. Your use of the Content is governed by these Terms of Service and any license agreement accompanying the Content ("License Agreement"). You may not download or use any Content that is accompanied by or includes a License Agreement unless you first agree to the terms of the License Agreement.

### **6.2 Content License**

For any Content not accompanied by a License Agreement, ThumbStopper grants you a personal, nontransferable, non-exclusive, limited license to use the Content for viewing and otherwise using the Services in accordance with these Terms of Service, and for no other purpose provided that you keep intact all copyright and other proprietary notices.

### **6.3 Intellectual Property**

All Content is owned by ThumbStopper and/or its suppliers and is protected by copyright laws and international treaty provisions. Any reproduction or redistribution of the Content is expressly prohibited. The Content is warranted, if at all, only according to the terms of the applicable License Agreement and is subject to the disclaimers of these Terms of Service.

### **6.4 Export Control Laws**

You acknowledge that the Content, and any accompanying documentation and/or technical information, is subject to applicable export control laws and regulations of the USA. You agree not to export or re-export the Content, directly or indirectly, to any countries that are subject to USA export restrictions.

## **7. Copyright Policy**

### **7.1 Infringement**

ThumbStopper respects copyright law and expects our account holders to do the same. Unauthorized copying or distribution of copyrighted works is an infringement of the copyright holders' rights. In our discretion and in appropriate circumstances, ThumbStopper may terminate your account if you infringe upon the copyright or other intellectual property rights of others.

### **7.2 Copyright Agent**

If you are a copyright holder who believes that the Site is hosting materials that infringe your copyright, you may request removal of those materials from the Site by submitting written notification to our Copyright Agent designated below:

Chief Financial Officer, ThumbStopper LLC  
3415 East Frontage Road, Suite B, Tampa, Florida 33607  
813-470-7094  
[Accounting@ThumbStopper.com](mailto:Accounting@ThumbStopper.com)

### **7.3 Notice of Infringement**

To file a notice of infringement with us, one needs to fulfill the requirements specified in Title II of the Digital Millennium Copyright Act of 1998. The information that you should provide to us includes the following: (a) your name, mailing address, and email address; (b) a statement identifying the copyrighted material You claim is infringed, such as a URL linking to an authorized version of the copyrighted material; (c) a statement identifying where the allegedly infringing material is located, such as URL linking



to the allegedly infringing material; (d) A statement that You have a good faith belief that the allegedly infringing material identified in section (b), above, is not authorized by the copyright owner, its agent, or the law; (e) a statement, made under penalty of perjury, that the information in this notice is accurate and that You are the owner of the copyrighted material or are authorized to act on behalf of the owner of the copyrighted material; and (f) An electronic or physical signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## **8. Indemnity and Disclaimer**

### **8.1 Indemnity**

You will, at your own expense, indemnify, defend and hold ThumbStopper and our subsidiaries, affiliates, officers, directors, agents, and employees harmless from and against any loss, cost, damages, liability, or expense arising out of or relating to: (a) a third-party claim, action or allegation of infringement, misuse or misappropriation based on information, data, files or other content submitted by you to us; (b) any fraud, manipulation, or other breach of these Terms of Service by you; (c) any third-party claim, action or allegation brought against ThumbStopper arising out of or relating to a dispute with you over these Terms of Use; (d) your violation of any law or the rights of a third party; (e) your use of the Services; and (f) use of your account by any third party. ThumbStopper will have the right to participate in its defense and hire counsel of its choice, at your expense. You will not settle any action or claims on ThumbStopper's behalf without the prior written consent of ThumbStopper.

### **8.2 Disclaimer**

THIS SITE AND THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. ThumbStopper will not be liable for (a) any loss of business, profits or goodwill, loss of use or data, interruption of business or for any indirect, special, incidental or consequential damages of any character, (however arising, including negligence) arising out of or in connection with these Terms of Service even if ThumbStopper is aware of the possibility of such damages, or (b) any damages that result in any way from your use or inability to use the Services, or that result from errors, defects, omissions, delays in operation or transmission, or any other failure of performance of the Services. ThumbStopper does not warrant that ThumbStopper will meet your requirements or that the Services will be uninterrupted or error free. The basic and enhanced VIN data within ThumbStopper reasonably reflects the equipment and pricing information, which ThumbStopper regularly obtains. It is possible, however, that actual standard and optional equipment data and price may differ from that displayed in ThumbStopper. ThumbStopper assumes no responsibility for omissions or errors.

### **8.3 Maximum Liability**

IN NO EVENT SHALL THUMBSTOPPER'S TOTAL LIABILITY OF ANY KIND, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, EXCEED TOTAL FEES (EXCLUDING FEES PAID TO 3<sup>RD</sup> PARTY WEBSITES SUCH AS CRAIGSLIST AND FACEBOOK) PAID FOR THREE MONTHS OF CONCURRENT SERVICE AND WILL ONLY APPLY TO FEES PAID BY YOU FOR THE SERVICE GIVING RISE TO THE CLAIM. FURTHERMORE, YOU ARE RESPONSIBLE FOR MONITORING THE QUALITY AND PERFORMANCE OF THE SERVICES AND YOU AGREE TO PROMPTLY NOTIFY THUMBSTOPPER VIA PHONE, EMAIL OR WRITING WITHIN 30 DAYS OF AN ALLEGED INCIDENT OF ANY PERCEIVED ISSUE THAT DIRECTLY RESULTS FROM SAID SERVICES SO THAT THUMBSTOPPER MAY HAVE A REASONABLE OPPORTUNITY TO REMEDY ANY POTENTIAL SITUATION BEFORE FURTHER ESCALATION CAN OCCUR. THUMBSTOPPER WILL NOT BE LIABLE FOR ANY PERCEIVED ISSUE NOT PROMPTLY BROUGHT TO THUMBSTOPPER'S ATTENTION WITHIN 30 DAYS OF THE OCCURRENCE OF THE INCIDENT GIVING RISE TO THE CLAIM.

## 9. General

### 9.1 Termination at ThumbStopper Discretion

In our discretion, we may immediately issue a warning, temporarily suspend, or terminate your registration, and delete information you have provided us if you breach any provision of these Terms of Service. This Section does not limit any other remedies that may be available to ThumbStopper.

### 9.2 Third Party Services

The Services rely in part on the proper functioning and interaction of third party websites, services and software with the Site. For example, our customer manager uses a third party to review emails for spam or viruses. Failure of, or changes to, or misconduct by such third parties or their websites, services or software may affect our provision of the Services. ThumbStopper is not liable for any third-party actions or omissions.

### 9.3 Third Party Agreements

You will comply with the terms and conditions of all agreements you have with third parties, including providers of marketplaces, as such terms and conditions relate to use of the Services including terms and conditions related to types of items that may be sold or restrictions on concurrent sales. Your compliance (including posting to the proper category) is required for the user agreements (or such similar agreements such as Terms of Service, Terms of Use and/or End User license agreement) on any website on which you use ThumbStopper including, but not limited to, the user agreements and conditions as posted at

<https://www.facebook.com/terms>

<https://twitter.com/tos?lang=en>

<https://www.youtube.com/static?template=terms>

<https://help.instagram.com/478745558852511>

### 9.4 Onsite Advertising, Marketing and Promotion of Offers

ThumbStopper may, in its discretion, (a) place advertisements on the webpage for related or unrelated services, and (b) place links to other pages that advertise other related and unrelated services. Such advertisements and links may be used for purposes including, but not limited to, our proprietary social media, sales, marketing, and re-marketing activities using a variety of methods including social media placement, email, on-site web chat, page re-directs, and telemarketing. Your use of the Services is limited to advertising and follow up communications for the purpose of selling your goods and/or services, and for no other purpose.

### 9.5 No Agency

Except for the limited purpose stated in the 'Limited Agency' Section, you and ThumbStopper are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor franchisee relationship is intended or created by these Terms of Service.

### 9.6 Notices

Except as explicitly stated otherwise, any notices will be given by email to [accounting@ThumbStopper.com](mailto:accounting@ThumbStopper.com) (in the case of ThumbStopper) or to the email address you provide to ThumbStopper during the registration process (in your case), or such other address as the party will specify. Notice will be deemed given twenty-four (24) hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the address provided to ThumbStopper during the registration process. In such case, notice will be deemed given three (3) days after the date of mailing.





### **9.7 Arbitration**

Any controversy or claim in any way arising out of or relating to these Terms of Service will be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitration will be conducted in Tampa, Florida and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Either you or ThumbStopper may seek any interim or preliminary relief from a court of competent jurisdiction in Florida necessary to protect the rights or property of you or ThumbStopper pending the completion of arbitration.

### **9.8 Governing Law**

Florida law will govern these Terms of Service, except for the body of law relating to conflicts of law. Subject to Section 8.7, venue for any legal action will be the state courts of Hillsborough County, Florida, or the federal courts of the Middle District of Florida.

### **9.9 Waivers**

A party's failure to enforce any provision of these Terms of Service shall not be a waiver of the provision or the right to enforce it at a later time.

### **9.10 Entire Agreement**

These Terms of Service sets forth the entire understanding and agreement between you and ThumbStopper with respect to the subject matter hereof. You agree that you are not entering into these Terms of Service in reliance on any statements or representations other than those set forth herein. If any provision of these Terms of Service is held to be invalid or unenforceable, such provision will be struck and the remaining provisions will be enforced.

### **9.11 Assignment**

These Terms of Service and your user names and passwords are not assignable, transferable or sub-licensable by you without ThumbStopper's prior written consent and any such conveyance will be null and void.

### **9.12 Attorneys' Fees**

The prevailing party in any litigation in connection with these Terms of Service will be entitled to recover from the other party its costs and reasonable attorneys' fees and other expenses.

### **9.13 Conflict; Headings**

Should any term or condition be in conflict between these Terms of Service and any document incorporated by reference into these Terms of Service, the provisions of these Terms of Service will control. The use of headings is for convenience and will not affect the interpretation of these Terms of Service.