

## PROVEN TERMS OF SERVICE FOR CANDIDATES

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TicTasks, Inc., d/b/a Proven (“Proven” or “we”) provides a resource for candidates with skill sets in the manual trades to connect with companies seeking such candidates (the “Services”) through our website, accessible at <http://www.proven.com> (the “Site”) and as a mobile device application (the “Application”). Please read carefully the following terms and conditions (“Terms”) and our Privacy Policy, which may be found at <http://www.proven.com/pages/privacyPolicy>. These Terms govern your access to and use of the Site, Application and Services and, except as otherwise provided in these Terms, all text, graphics, images, audio, video, Virtual Goods (defined below), information or other materials available through the Site, Application and Services (collectively, the “Content”), and constitute a binding legal agreement between you and Proven.

Certain areas of the Site, Application and Services (and your access to or use of certain Content) may have different terms and conditions posted or may require you to agree with and accept additional terms and conditions. If there is a conflict between these Terms and terms and conditions posted for a specific area of the Site, Application, Services or Content, the latter terms and conditions will take precedence with respect to your use of or access to that area of the Site, Application, Services or Content.

YOU ACKNOWLEDGE AND AGREE THAT, BY CLICKING ON THE “I AGREE” OR “I ACCEPT” BUTTON, OR ACCESSING OR USING THE SITE, APPLICATION OR SERVICES OR BY DOWNLOADING OR POSTING ANY CONTENT FROM THE SITE OR THROUGH THE APPLICATION OR SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, AND THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY, THESE TERMS, WHETHER OR NOT YOU HAVE REGISTERED THROUGH THE SITE, APPLICATION OR SERVICES. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE SITE, APPLICATION, SERVICES OR CONTENT. If you accept or agree to these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

### **How the Site, Application and Services Work**

- Proven provides a service that helps match companies seeking to fill specific positions (“Companies”) with prospective candidates (“Candidates”) through the use of the Site, Application and Services.
- A Candidate can view job positions available through the Site, Application and Services or on third-party offerings and supply Proven with information about the Candidate to be provided to Companies via the Services, such as the Candidate’s name and email address, job history (as further described below), skill set, educational history or other publicly available information from certain social networking services (collectively, “Candidate Information”). Such Candidate Information is used to create a profile for the Candidate (“Profile”).

### **Modification**

Proven reserves the right, at its sole discretion, to modify, discontinue or terminate the Site, Application or Services or to modify these Terms, at any time and without prior notice. If we modify these Terms, we will post the modification on the Site or Application or through the Services or provide you with notice of the modification. We will also update the “Last Updated Date” at the top of these Terms. By continuing to access or use the Site, Application or Services after we have posted a modification on the Site or Application or through the Services or have provided you with notice of a modification, you are indicating that you agree to be bound by the modified Terms. If the modified Terms are not acceptable to you, your only recourse is to cease using the Site, Application and Services.

### **Eligibility**

The Site, Application and Services are intended solely for persons who are 18 or older. Any access to or use of the Site, Application or Services by anyone under 18 is expressly prohibited. By accessing or using the Site, Application or Services you represent and warrant that you are 18 or older.

### **Your Relationship with Proven**

PROVEN ACTS ONLY AS A PLATFORM THAT FACILITATES THE SHARING OF INFORMATION BETWEEN CANDIDATES AND COMPANIES. PROVEN DOES NOT REPRESENT OR WARRANT THAT ANY INFORMATION OBTAINED VIA THE SITE, APPLICATION OR SERVICES IS ACCURATE OR ERROR-FREE OR THAT IT IS UP TO DATE. YOU UNDERSTAND AND AGREE THAT PROVEN DOES NOT INDEPENDENTLY VERIFY OR GUARANTEE ANY SUCH INFORMATION. PROVEN DOES NOT ENDORSE, RECOMMEND, OR GUARANTEE ANY COMPANY OR ANY COMPANY’S WILLINGNESS OR ABILITY TO HIRE ANY INDIVIDUAL, AND NOTHING IN THESE TERMS WILL BE CONSIDERED AN ENDORSEMENT, RECOMMENDATION, WARRANTY OR GUARANTEE OF THE FOREGOING BY PROVEN. PROVEN HAS NO CONTROL OVER CONTENT POSTED BY COMPANIES, THE QUALITY, SAFETY OR LEGALITY OF ANY CANDIDATE INFORMATION OR COMPANY INFORMATION POSTED VIA THE SITE, APPLICATION AND SERVICES, THE TRUTH OR ACCURACY OF ANY SUCH INFORMATION, AND/OR THE ABILITY OF COMPANIES TO OFFER WORK TO CANDIDATES OR THE ABILITY OF CANDIDATES TO FILL ANY JOB OPENINGS. IN ADDITION, PROVEN MAKES NO REPRESENTATIONS ABOUT ANY JOBS, CANDIDATE INFORMATION OR OTHER INFORMATION ON THE SITE, APPLICATION OR SERVICES. PROVEN WILL NOT BE HELD RESPONSIBLE, AND DISCLAIMS ALL RESPONSIBILITY, FOR ANY COMPANY INFORMATION OR CANDIDATE INFORMATION SHARED VIA THE SERVICES THAT FAILS TO COMPLY WITH APPLICABLE LAWS OR REGULATIONS.

### **Account Registration and Termination**

In order to access certain features of the Site, Application and Services, you must register to create an “Account” and become a “Member” of the Site, Application and Services. We will create your Account and Profile for your use of the Services based upon the personal information that you provide to us via the Services. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. Proven reserves the right to suspend or terminate your Account if any information provided during the registration process or thereafter proves to be inaccurate, not current or incomplete. You are responsible for safeguarding your password.

You agree not to disclose your password to any third party and to take sole responsibility for any activities or actions under your Account, whether or not you have authorized such activities or actions. You will immediately notify Proven of any unauthorized use of your Account. You may request to cancel your Account at any time by sending an email to support@proven.com or by deactivating your Account via the “Deactivate” feature of the Site, Application and Services.

Without limiting other remedies, Proven may at any time refuse to provide access to the Site, Application or Services to you or suspend your access to the Site, Application or Services, permanently or temporarily, without reason or notice to you. Such termination or suspension amounts to a termination by Proven of these Terms (i) if Proven suspects you have failed to comply with any terms or conditions of these Terms or any rules or policies established by Proven or (ii) if Proven suspects that your actions may be illegal or cause liability, harm or disruption to you, Companies, Candidates, Proven or any other Members of the Site, Application or Services or any third parties.

### **Social Networking Services**

You can provide additional Candidate Information to Proven by logging into your account with certain third party social networking sites (“SNS”) (including, but not limited to, Facebook) via our Site, Application or Services. If you decide to log into an SNS via our Site, Application or Services, we will obtain the personal information you have provided to the SNS (such as your “real” name, profile picture, email address and other information you make publicly available via the applicable SNS) from the account you have with such SNS and use that information to update your Account and Profile; the information we obtain may depend on the privacy settings you have with the SNS. You hereby consent to our access to and collection of such personal information about you.

### **Your Relationship with Companies and Other Members**

There is no guarantee that Proven can match appropriate Candidates with Companies. Your contractual rights regarding your relationship with Companies are governed by any contract you enter into with the applicable Company, if any. You are solely responsible for your interactions with Companies and other Members and will exercise caution, discretion, common sense and good judgment in using the Services and disclosing personal information to Companies, other Members and Proven. You agree to take reasonable precautions in all interactions with Companies and other Members, particularly if you decide to meet with a Company representative or other Member in person. YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND DISCRETION AND PROVEN HEREBY DISCLAIMS ANY AND ALL LIABILITY TO YOU OR ANY THIRD PARTY RELATING THERETO.

PROVEN IS NOT RESPONSIBLE, AND DISCLAIMS ALL RESPONSIBILITY, FOR THE USE OR EXCHANGE OF ANY INFORMATION, SERVICES OR FILES BETWEEN OR AMONG PROVEN MEMBERS, INCLUDING BUT NOT LIMITED TO COMPANIES AND CANDIDATES. FURTHER, PROVEN DOES NOT CONTROL, NOR IS IT RESPONSIBLE FOR, THE TRUTH, ACCURACY, COMPLETENESS, SAFETY, TIMELINESS, QUALITY, APPROPRIATENESS, LEGALITY OR APPLICABILITY OF ANYTHING SAID OR WRITTEN BY MEMBERS INCLUDING WITHOUT LIMITATION, ANY INFORMATION CONTAINED IN EMPLOYER INFORMATION OR ANY CANDIDATE INFORMATION, PROFILES OR ANY INFORMATION MADE AVAILABLE THROUGH THE

SITE, APPLICATION OR SERVICES THAT IS PROVIDED BY MEMBERS. Proven assumes no responsibility for monitoring any Member Content.

### **In-Services Virtual Goods**

The Services may include virtual items, but not limited to Proven badges (“Virtual Goods”). Proven’s Virtual Goods are made available to you at the sole discretion of Proven and may be discontinued at any time. Virtual Goods may never be redeemed for “real world” money, goods or other items of monetary value from Proven or any other party.

Virtual Goods are digital items only. Your right to use any Virtual Goods that you obtain via the Services are limited to a non-exclusive, non-transferable, non-sublicenseable, revocable right to use such Virtual Goods solely within the Services for your personal use and for no other purpose. Except for the limited rights described herein, you have no property or ownership interest or right or title in or to any such Virtual Goods, which remain the exclusive property of Proven. The existence of a particular offer of Virtual Goods is not a commitment by Proven to maintain or continue to make the Virtual Goods available in the future. The scope, variety and type of Virtual Goods that you may obtain can change at any time. Proven has the absolute right to manage, regulate, control, modify or eliminate such Virtual Goods as it sees fit in its sole discretion, and Proven will have no liability to you or anyone for the exercise of such rights.

Except where explicitly authorized within the Services, (i) transfers of Virtual Goods are strictly prohibited; (ii) outside of the Services, you may not buy or sell any Virtual Goods for “real world” money or otherwise exchange items for value; and (iii) Proven does not recognize any such purported transfers of Virtual Goods, nor the purported sale, gift or trade in the “real world” of anything that appears in the Services. Any attempt to do any of the foregoing is in violation of these Terms and will result in an automatic termination of your rights to use the Virtual Goods and may result in termination of your Account, a lifetime ban from the Services and/or possible legal action. You agree that all sales related to your use of the Services are final. No refunds will be given, except in our sole and absolute discretion.

All Virtual Goods are forfeited if your Account is terminated or suspended for any reason, in Proven’s sole and absolute discretion, or if Proven discontinues providing the Services.

### **Privacy**

See Proven’s Privacy Policy at <http://www.proven.com/pages/privacyPolicy> for information and notices concerning Proven’s collection and use of your personal information.

### **Ownership**

The Site, Application, Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms, Proven and its licensors exclusively own all right, title and interest in and to the Site, Application, Services and Content, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Site, Application, Services or Content.

## **Content License**

Subject to your compliance with the terms and conditions of these Terms, Proven grants you a limited, non-exclusive, non-transferable license, without the right to sublicense, to access and view any Content solely for your personal and non-commercial purposes. You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Site, Application, Services or Content, except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Proven or its licensors, except for the licenses and rights expressly granted in these Terms.

## **Application License**

Subject to your compliance with these Terms, Proven grants you a limited non-exclusive, non-transferable license to download and install a copy of the Application on a single mobile device or computer that you own or control and to run such copy of the Application solely for your own personal use. Furthermore, with respect to any Application accessed through or downloaded from the Apple App Store (“App Store Sourced Application”), you will use the App Store Sourced Application only: (i) on an Apple-branded product that runs iOS (Apple’s proprietary operating system software); and (ii) as permitted by the “Usage Rules” set forth in the Apple App Store Terms of Service. Proven reserves all rights in and to the Application not expressly granted to you under these Terms.

## **Accessing and Downloading the Application from iTunes**

The following applies to any App Store Sourced Application:

- You acknowledge and agree that (i) these Terms are concluded between you and Proven only, and not Apple, and (ii) Proven, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.
- You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.
- In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Proven and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Proven.
- You and Proven acknowledge that, as between Proven and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- You and Proven acknowledge that, in the event of any third party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Proven and Apple, Proven, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms.
- You and Proven acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App Store Sourced Application against you as a third party beneficiary thereof.
- Without limiting any other terms of these Terms, you must comply with all applicable third party terms of agreement when using the App Store Sourced Application.

### **Member Content**

As a Member, you may post, upload, publish, submit or transmit text, graphics, images, information or other materials to be made available through the Site, Application and Services ("Member Content"). By making available any Member Content through the Site, Application and Services, you hereby grant to Proven a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such Member Content only on, through or by means of the Site, Application and Services. Proven does not claim any ownership rights in any such Member Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such Member Content.

You acknowledge and agree that you are solely responsible for all Member Content that you make available through the Site, Application or Services. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all Member Content that you make available through the Site, Application or Services or you have all rights, licenses, consents and releases that are necessary to grant to Proven the rights in such Member Content, as contemplated under these Terms; and (ii) neither the Member Content nor your posting, uploading, publication, submission or transmittal of the Member Content or Proven's use of the Member Content (or any portion thereof) on, through or by means of the Site, Application or Services will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

### **Feedback**

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Site, Application and Services ("Feedback"). You may submit Feedback by emailing us at [support@proven.com](mailto:support@proven.com) or clicking the "Contact Us" link on the Site, Application and Services. You acknowledge and agree that all Feedback will be the sole and exclusive

property of Proven and you hereby irrevocably assign to Proven and agree to irrevocably assign to Proven all of your right, title, and interest in and to all Feedback, including without limitation all worldwide patent rights, copyright rights, trade secret rights, and other proprietary or intellectual property rights therein. At Proven's request and expense, you will execute documents and take such further acts as Proven may reasonably request to assist Proven to acquire, perfect, and maintain its intellectual property rights and other legal protections for the Feedback.

### **General Prohibitions**

You agree not to do any of the following:

- Post, upload, publish, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any other person (vii) promotes illegal or harmful activities or substances; (viii) or is inaccurate or untrue.
- Use any information obtained from the Site, Application or Services unless you are seeking employment and related information or an employer seeking an employee;
- Use, display, mirror or frame the Site, Application or Services, or any individual element within the Site, Application or Services, Proven's name, any Proven trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Proven's express written consent;
- Access, tamper with, or use non-public areas of the Site, Application or Services, Proven's computer systems, or the technical delivery systems of Proven's providers;
- Attempt to probe, scan, or test the vulnerability of any Proven system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Proven or any of Proven's providers or any other third party (including another Member) to protect the Site, Application Services or Content;
- Attempt to access or search the Site, Application, Services or Content or download Content from the Site, Application or Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Proven or other generally available third party web browsers;
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

- Use any meta tags or other hidden text or metadata utilizing a Proven trademark, logo URL or product name without Proven's express written consent;
- Use the Site, Application, Services or Content for any commercial purpose or the benefit of any third party or in any manner except as permitted by these Terms;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Site, Application, Services or Content to send altered, deceptive or false source identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Site, Application, Services or Content;
- Interfere with, or attempt to interfere with, the access of any Member, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Site, Application or Services;
- Collect or store any personally identifiable information from the Site, Application or Services from other Members of the Site, Application or Services without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Proven will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Proven may involve and cooperate with law enforcement authorities in prosecuting Members who violate these Terms. You acknowledge that Proven has no obligation to monitor your access to or use of the Site, Application, Services or Content or to review or edit any Member Content, but has the right to do so for the purpose of operating the Site, Application and Services, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. Proven reserves the right, at any time and without prior notice, to remove or disable access to any Content, including, any Member Content, that Proven, at its sole discretion, considers to be in violation of these Terms or otherwise harmful to the Site, Application or Services.

### **Copyright Policy**

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### **Links**



The Site, Application and Services may contain links to third-party websites or resources. You acknowledge and agree that Proven is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by Proven of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

### **Disclaimers**

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NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PROVEN OR THROUGH THE SITE, APPLICATION SERVICES OR CONTENT, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER MEMBERS OF THE SITE, APPLICATION OR SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE, APPLICATION OR SERVICES. YOU UNDERSTAND THAT PROVEN DOES NOT SCREEN OR INQUIRE INTO THE BACKGROUND OF ANY MEMBERS OF THE SITE, APPLICATION OR SERVICES, NOR DOES PROVEN MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF MEMBERS OF THE SITE, APPLICATION OR SERVICES. PROVEN MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF MEMBERS OF THE SITE, APPLICATION OR SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE MEMBERS OF THE SITE, APPLICATION OR SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER MEMBERS OF THE SITE, APPLICATION OR SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE, APPLICATION OR SERVICES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

### **Indemnity**

You agree to defend, indemnify, and hold Proven, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with your access to or use of the Site, Application Services or Content, or your violation of these Terms.

### **Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SITE, APPLICATION, SERVICES AND CONTENT REMAINS WITH YOU. PROVEN WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SITE, APPLICATION, SERVICES OR CONTENT, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER MEMBERS OF THE SITE, APPLICATION OR SERVICES OR OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE, APPLICATION OR SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT PROVEN HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL PROVEN'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SITE, APPLICATION SERVICES OR CONTENT EXCEED THE AMOUNTS YOU HAVE PAID TO PROVEN FOR USE OF THE SITE, APPLICATION AND SERVICES IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT MADE ANY PAYMENTS TO PROVEN, AS APPLICABLE. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN PROVEN AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

### **Proprietary Rights Notices**

All trademarks, service marks, logos, trade names and any other proprietary designations of Proven used herein are trademarks or registered trademarks of Proven. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

### **Controlling Law and Jurisdiction**

These Terms and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights will

be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

### **Export Control**

You agree to comply fully with all U.S. and foreign export laws and regulations to ensure that neither the Application nor any technical data related thereto nor any direct product thereof is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. By using the App Store Sourced Application, you represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

### **Entire Agreement**

These Terms constitute the entire and exclusive understanding and agreement between Proven and you regarding the Site, Application, Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Proven and you regarding the Site, Application, Services and Content.

### **Assignment**

You may not assign or transfer these Terms, by operation of law or otherwise, without Proven’s prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Proven may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

### **Notices**

Any notices or other communications permitted to required hereunder, including those regarding modifications to these Terms, will be in writing and given: (i) by Proven via email (in each case to the address that you provide) or (ii) by posting to the Site or Application or through the Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.

### **Dispute Resolution**

You and Proven agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Site, Services or Application (collectively, “**Disputes**”) will be settled by binding arbitration, except that each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents or other intellectual property rights. **You acknowledge and agree that you and Proven are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.** Further, unless both you and Proven otherwise agree in writing, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of

any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this “Dispute Resolution” section will be deemed void. Except as provided in the preceding sentence, this “Dispute Resolution” section will survive any termination of these Terms.

Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association (“**AAA**”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “**AAA Rules**”) then in effect, except as modified by this “Dispute Resolution” section. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at [http://www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_004175](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004175) and a separate form for California residents at [http://adr.org/aaa/ShowPDF?doc=ADRSTG\\_004314](http://adr.org/aaa/ShowPDF?doc=ADRSTG_004314).) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA’s roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure. Unless you and Proven otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Proven submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator’s Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator’s decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator’s award damages must be consistent with the terms of the “Limitation of Liability” section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant’s individual claim. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses, to the extent provided under applicable law. Proven will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys’ fees and expenses if it prevails in arbitration.

Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Proven will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes. Notwithstanding the provisions of the “Modification” section above, if Proven changes this “Dispute Resolution” section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to [support@proven.com](mailto:support@proven.com)) within 30 days of the date such change became effective, as indicated in the “Last Updated Date” above or in the date of Proven’s email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Proven in accordance with the provisions of this “Dispute Resolution” section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

## **General**

The failure of Proven to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Proven. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

## **Contacting Proven**

If you have any questions about these Terms or any App Store Sourced Application, please contact Proven at [support@proven.com](mailto:support@proven.com).