

## Emprove Terms of Service

Last Updated: May 29, 2018

Welcome, and thank you for your interest in Emprove, Inc. (“**Emprove**,” “**we**,” or “**us**”) and our website at [www.emproveit.com](http://www.emproveit.com) along with our related websites, networks, applications, mobile applications, and other services provided by us (collectively, the “**Service**”). These Terms of Service are a legally binding contract between you and Emprove regarding your use of the Service.

### PLEASE READ THE FOLLOWING TERMS CAREFULLY.

**BY CLICKING “I ACCEPT,” OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICE**, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING EMPROVE’S PRIVACY POLICY (TOGETHER, THESE “**TERMS**”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE. YOUR USE OF THE SERVICE, AND EMPROVE’S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY EMPROVE AND BY YOU TO BE BOUND BY THESE TERMS.

**ARBITRATION NOTICE.** Except for certain kinds of disputes described in Section 18, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND EMPROVE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 18.)

- 1. Emprove Service Overview.** Emprove provides a platform where people seeking contractors for home improvement and renovation projects (“**Homeowners**”) can submit information to the Service and generate a detailed scope of work, project cost estimate (“**Estimate**”) and a request for proposal (“**RFP**”). The Estimate is not an offer by us to provide construction services, nor is it a guarantee of ultimate project costs. The RFP is provided for the purpose of soliciting bid proposals (“**Bid Proposal**”) from contractors (“**Contractors**”) (collectively, Homeowners and Contractors are referred to herein as “**Users**”). Any decision by a Contractor to submit a Bid Proposal in response to an RFP, by a Homeowner to accept a Bid Proposal, or by a User to enter into an agreement for a Contractor’s services upon acceptance of a Bid Proposal is made in such User’s sole discretion.
- 2. Eligibility.** You must be at least 18 years old to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Service; and (c) your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.
- 3. Accounts and Registration.** To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some

information about yourself, such as your name, email address, or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at support@emproveit.com.

4. **General Payment Terms.** Certain features of the Service may require you to pay fees. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are in U.S. Dollars and are non-refundable.
  - 4.1 **Price.** Emprove reserves the right to determine pricing for the Service. Emprove will make reasonable efforts to keep pricing information published on the website up to date. We encourage you to check our website periodically for current pricing information. Emprove may change the fees for any feature of the Service, including additional fees or charges, if Emprove gives you advance notice of changes before they apply. Emprove, at its sole discretion, may make promotional offers with different features and different pricing to any of Emprove's customers. These promotional offers, unless made to you, will not apply to your offer or these Terms.
  - 4.2 **Success Fee.** If a Homeowner decides to accept a bid from a Contractor in response to an RFP, the Contractor will be required to pay a fee (the "**Success Fee**") in order to be connected with the Homeowner through the Service. Contracting with or engaging another User off the Service for services similar to those included in any Estimate, RFP or Bid Proposal without paying the Success Fee is strictly prohibited.
  - 4.3 **Authorization.** You authorize Emprove to charge all sums for the orders that you make and any level of Service you select as described in these Terms or published by Emprove, including all applicable taxes, to the payment method specified in your account. If you pay any fees with a credit card, Emprove may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.
  - 4.4 **Refunds.** Except for the refunds described in this Section 4.4, all charges are non-refundable. If a Homeowner selects a Contractor for a project through the Service and the Contractor pays the Success Fee, Emprove, in its sole discretion, may refund all or a portion of the fees paid to Emprove by the Homeowner to publish the applicable RFP that resulted in the accepted proposal, as may be specified in the program materials at the time of RFP submission ("**Eligible Refunds**"). Eligible Refunds will be refunded to the payment method used to make the original purchase, and may take up to 10 business days to process following payment of the Success Fee. Homeowners will not be eligible for a refund if the Contractor does not pay the Success Fee.
  - 4.5 **Delinquent Accounts.** Emprove may suspend or terminate access to the Service, including fee-based portions of the Service, for any account for which any amount is due

but unpaid, including any account fees that would have been payable as a Success Fee or other applicable fee if consummated on the Service. Any fees not paid when due will accrue interest at the rate of 1.5% per month or the highest rate allowed by applicable law, whichever is less. In addition to the amount due for the Service, a delinquent account will be charged with fees or charges that are incidental to any chargeback or collection of any the unpaid amount, including collection fees.

## 5. Licenses

- 5.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, Emprove grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Service and, to the extent we make a mobile application available, to install and use one object code copy of any mobile application associated with the Service obtained from a legitimate marketplace.
- 5.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.
- 5.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service (“**Feedback**”), then you hereby grant Emprove an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

- 6. **Ownership; Proprietary Rights.** The Service is owned and operated by Emprove. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (“**Materials**”) provided by Emprove are protected by intellectual property and other laws. All Materials included in the Service are the property of Emprove or its third party licensors. Except as expressly authorized by Emprove, you may not make use of the Materials. Emprove reserves all rights to the Materials not granted expressly in these Terms.

## 7. Third Party Terms

- 7.1 **Third Party Services and Linked Websites.** Emprove may provide tools through the Service that enable you to export information, including User Content, to third party services, including through features that allow you to link your account on Emprove with an account on the third party service, such as Twitter or Facebook, or through our implementation of third party buttons (such as “like” or “share” buttons). By using one of these tools, you agree that Emprove may transfer that information to the applicable third party service. Third party services are not under Emprove’s control, and, to the

fullest extent permitted by law, Emprove is not responsible for any third party service's use of your exported information. The Service may also contain links to third party websites. Linked websites are not under Emprove's control, and Emprove is not responsible for their content.

- 7.2 **Third Party Software.** The Service may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third Party Components**"). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third Party Components under the applicable third party licenses or to limit your use of Third Party Components under those third party licenses.

## 8. User Content

- 8.1 **User Content Generally.** Certain features of the Service may permit users to upload content to the Service, including messages, reviews, photos, video, images, folders, data, text, and other types of works ("**User Content**") and to publish User Content on the Service. You retain any copyright and other proprietary rights that you may hold in the User Content that you post to the Service.
- 8.2 **Limited License Grant to Emprove.** By providing User Content to or via the Service, you grant Emprove a worldwide, non-exclusive, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed.
- 8.3 **Limited License Grant to Other Users.** By providing User Content to or via the Service to other users of the Service, you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.
- 8.4 **User Content Representations and Warranties.** Emprove disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Service. By providing User Content via the Service, you affirm, represent, and warrant that:
- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Emprove and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Emprove, the Service, and these Terms;
  - b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right,

privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Emprove to violate any law or regulation; and

- c. your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate.

8.5 **User Content Disclaimer.** We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. Emprove may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that when using the Service you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Emprove with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Emprove does not permit copyright-infringing activities on the Service.

8.6 **Monitoring Content.** Emprove does not control and does not have any obligation to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Service by its users. You acknowledge and agree that Emprove reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Emprove chooses to monitor the content, Emprove still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy.

9. **Prohibited Conduct.** BY USING THE SERVICE YOU AGREE NOT TO:

- a. use the Service for any illegal purpose or in violation of any local, state, national, or international law;
- b. harass, threaten, demean, embarrass, or otherwise harm any other user of the Service;
- c. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- d. interfere with security-related features of the Service, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion

of the Service except to the extent that the activity is expressly permitted by applicable law;

- e. interfere with the operation of the Service or any user's enjoyment of the Service, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Service; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
- f. engage in any fraudulent activity, or submit any information or materials that you know or should know are inaccurate, incomplete, or misleading, or misrepresent or impersonate any person or entity, claim any false affiliation, certification, license, permit, or status, or access any other Service account without permission;
- g. take any action designed to influence or manipulate the Service or any RFP, response (including applicable pricing), or result associated therewith, including shill bidding, false or misleading submissions, or other similar conduct;
- h. contract with or solicit to contract any other User for services described in or substantially related to an Estimate, RFP, or Bid Proposal without paying the Success Fee, or contact any other User in any manner intended to bypass or avoid payment of applicable fees on the Service;
- i. sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 6) or any right or ability to view, access, or use any Materials; or
- j. attempt to do any of the acts described in this Section 9 or assist or permit any person in engaging in any of the acts described in this Section 9.

## 10. Digital Millennium Copyright Act

- 10.1 **DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. §512, as amended). If you have an intellectual property rights-related complaint about material posted on the Service, you may contact our Designated Agent at the following address:

Emprove, Inc.  
ATTN: Legal Department (Copyright Notification)  
10150 Covington Cross Drive  
Las Vegas, NV 89144-6567  
+1 (702) 844-5000  
Email:copyright@emproveit.com

Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must comply include the following information:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
- b. a description of the copyrighted work or other intellectual property that you claim has been infringed;
- c. a description of the material that you claim is infringing and where it is located on the Service;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
- f. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

10.2 **Repeat Infringers.** Emprove will promptly terminate the accounts of users that are determined by Emprove to be repeat infringers.

10.3 **False Notifications of Claimed Infringement or Counter Notifications.** We reserve the right to seek damages from any party that submits a notification of claimed infringement or counter notification in violation of the law.

11. **Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Service. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 11, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

## 12. **Term, Termination and Modification of the Service**

12.1 **Term.** These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 12.2.

- 12.2 **Termination.** If you violate any provision of these Terms, your authorization to access the Service and these Terms automatically terminate. In addition, Emprove may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice. You may terminate your account and these Terms at any time by contacting customer service at [support@emproveit.com](mailto:support@emproveit.com).
- 12.3 **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; (c) you must pay Emprove any unpaid amount that was due prior to termination; and (d) all payment obligations accrued prior to termination and Sections 5.3, 6, 12.3, 13, 14, 16, 17, 18 and 19 will survive.
- 12.4 **Modification of the Service.** Emprove reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. Emprove will have no liability for any change to the Service or any suspension or termination of your access to or use of the Service.
13. **Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Service, and you will defend and indemnify Emprove and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “Emprove Entities”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys’ fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Service; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.
14. **Safety; Dealing with Contractors.** The Service may enable you to interact with third parties, including Contractors and other suppliers, advisers, and other users, including in connection with your project planning and associated management activities. Emprove is not responsible for the conduct of any of its Users. You agree to use common sense and independent judgement in all interactions with Users or other third parties, such as in choosing the nature and extent of information to share, communications you engage in outside the Service, and the manner and circumstances in which you may arrange to meet in person, and your process for evaluating the bids you may receive and the associated underlying information (including references, licensing information, and the like). Any such interactions, including any transactions you may consummate with any Contractors, are solely between you and the applicable third party.

YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH USERS OR THIRD PARTIES. YOU UNDERSTAND THAT EMPROVE DOES NOT CONDUCT CRIMINAL BACKGROUND CHECKS ON OR OTHERWISE INQUIRE INTO THE BACKGROUND OF ITS CONTRACTORS. EMPROVE IS NOT AFFILIATED WITH OR RESPONSIBLE FOR ANY USERS OR OTHER THIRD PARTIES, DOES NOT ENDORSE, AND MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SUCH THIRD PARTIES, INCLUDING WITH RESPECT TO THEIR IDENTITY, FITNESS, COMPETENCE, BACKGROUND, LICENSURE, SOLVENCY, ABILITY OR OTHERWISE, OR THE QUALITY OF SERVICES PROVIDED.

15. **No Legal Advice.** Any sample documents or contracts made available to you through the Service are solely for informational purposes and not for the purpose of providing legal advice, YOU SHOULD SEEK LEGAL COUNSEL BEFORE ENTERING INTO ANY TRANSACTION OR AGREEMENT WITH A CONTRACTOR OR OTHER THIRD PARTY.

16. **Disclaimers; No Warranties**

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. EMPROVE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. EMPROVE DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND EMPROVE DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR EMPROVE ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE EMPROVE ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Emprove does not disclaim any warranty or other right that Emprove is prohibited from disclaiming under applicable law.

17. **Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE EMPROVE ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS)

ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY EMPLOYEE ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 18.4 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE EMPLOYEE ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (A) THE AMOUNT YOU HAVE PAID TO EMPLOYEE FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM; OR (B) \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 17 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 18. Dispute Resolution and Arbitration

- 18.1 **Generally.** In the interest of resolving disputes between you and Employee in the most expedient and cost effective manner, and except as described in Section 18.2, you and Employee agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND EMPLOYEE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.
- 18.2 **Exceptions.** Despite the provisions of Section 18.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.

- 18.3 **Arbitrator.** Any arbitration between you and Emprove will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“**AAA**”) under its Consumer Arbitration Rules (collectively, “**AAA Rules**”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Emprove. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 18.4 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). Emprove’s address for Notice is: Emprove, Inc., 10150 Covington Cross Drive, Las Vegas, NV 89144-6567. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Emprove may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Emprove must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Emprove in settlement of the dispute prior to the award, Emprove will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.
- 18.5 **Fees.** If you commence arbitration in accordance with these Terms, Emprove will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Clark County, NV, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Emprove for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator’s ruling on the merits.

- 18.6 **No Class Actions.** YOU AND EMPROVE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Emprove agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- 18.7 **Modifications to this Arbitration Provision.** If Emprove makes any future change to this arbitration provision, other than a change to Emprove's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Emprove's address for Notice of Arbitration, in which case your account with Emprove will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 18.8 **Enforceability.** If Section 18.6 is found to be unenforceable or if the entirety of this Section 18 is found to be unenforceable, then the entirety of this Section 18 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 19.2 will govern any action arising out of or related to these Terms.

## 19. Miscellaneous

- 19.1 **General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Emprove regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to". If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 19.2 **Governing Law.** These Terms are governed by the laws of the State of Nevada without regard to conflict of law principles. You and Emprove submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Clark County, Nevada for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in NV, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.

- 19.3 **Privacy Policy.** Please read the Emprove Privacy Policy <https://emproveit.com/privacy> carefully for information relating to our collection, use, storage, disclosure of your personal information. The Emprove Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 19.4 **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 19.5 **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 19.6 **Contact Information.** The Service is offered by Emprove, Inc., located at 10150 Covington Cross Drive, Las Vegas, NV 89144-6567. You may contact us by sending correspondence via Emprove’s Help Center: <https://help.emproveit.com/>. You can access a copy of these Terms by clicking here: <https://emproveit.com/TOS.pdf>
- 19.7 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.
- 19.8 **No Support.** We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.
- 19.9 **International Use.** The Service is intended for visitors located within the United States. We make no representation that the Service is appropriate or available for use outside of the United States. Access to the Service from countries or territories or by individuals where such access is illegal is prohibited.