

## PROSPER BI: SOFTWARE AS A SERVICE AGREEMENT

### PARTIES

- (1) **PROSPER SYSTEMS LIMITED** incorporated and registered in England and Wales with company number 10925321 whose registered office is at 1 Primrose Street, London, EC2A 2EX ("**Prosper Systems**").
- (2) You are the customer who has engaged Prosper Systems to provide you with the Software ("**Customer**").

### BACKGROUND

- (A) Prosper Systems has developed the Prosper BI software application which it makes available to subscribers via the internet for the purpose of making cashflow forecasts, predicting purchasing patterns and increasing efficiency across subscribers' businesses in order for them to make more informed decisions and scale their businesses effectively.
- (B) The Customer wishes to use Prosper BI pursuant to its business operations.
- (C) Prosper Systems has agreed to provide and the Customer has agreed to use Prosper BI, subject to the terms and conditions of this Agreement.

### AGREED TERMS

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Customer Data:** the data inputted by the Customer, Authorised Users, or Prosper Systems on the Customer's behalf, for the purpose of using the Services or facilitating the Customer's use of the Services. This may include the Customer's accounting data, sales data, cash flow and purchase data.

**Documentation:** any documents and materials made available to the Customer by Prosper Systems from time to time which sets out a description of the Services and/or any user instructions for the Services.

**Effective Date:** the date that this Agreement is deemed to be agreed by the parties pursuant to clause 2.2 or as otherwise specified in an Order.

**Forecasting Data:** the data provided through the Software by using predictive intelligence based on the Customer Data uploaded.

**Initial Subscription Term:** a period of three months from the Effective Date.

**Intellectual Property Rights:** any patents, trade marks, service marks, copyright, database rights, moral rights, design rights, unregistered design rights, domain names, rights in get-up, topography rights, know-how, confidential information and any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in England or any other part of the world together with any goodwill relating or attached to such rights;

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Order:** a document agreed by the parties setting out the Subscription Fees and other specifications for the Services.

**Renewal Period:** the period described in clause 10.2.

**Services:** the subscription services provided by Prosper Systems to the Customer under this Agreement for the use of the Software during the Subscription Term.

**Software:** the Prosper BI software application provided by Prosper Systems via <https://app.prosperbi.com> or any other website notified to the Customer by Prosper Systems from time to time, as more particularly described in the Documentation.

**Subscription Fees:** the subscription fees payable by the Customer to Prosper Systems for the Services.

**Subscription Term:** the Initial Subscription Term together with any subsequent Renewal Periods.

**Support Services Policy:** Prosper Systems policy for providing support in relation to the Services, as updated from time to time.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. The terms 'including', 'include', 'in particular' or any similar expression shall be illustrative only and are not intended to limit the sense of the words preceding those terms.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.5 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.6 A reference to 'writing' or 'written' includes email unless stated otherwise.

1.7 In the event of conflict between this Agreement and an Order, this Agreement will prevail unless there is an express statement in the Order that a particular clause in the Order will take priority over a specific term in this Agreement.

#### 2. ENGAGEMENT

2.1 This Agreement shall:

- (a) apply to and be incorporated into the relationship between Prosper Systems and the Customer in relation to the provision of the Services; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 This Agreement will be deemed to be accepted by the Customer upon the Customer using the Services after its receipt of this Agreement, or its express acceptance of the terms of this Agreement (whichever occurs earliest).

#### 3. CUSTOMER OBLIGATIONS

3.1 In relation to the Authorised Users, the Customer undertakes that:

- (a) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep their password confidential;
- (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to Prosper Systems within five Business Days of Prosper Systems written request at any time or times;
- (c) it shall permit Prosper Systems to audit the Customer's use of the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Prosper Systems expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and
- (d) if any of the audits referred to in clause 3.1(c) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Prosper Systems other rights, the Customer shall promptly disable such passwords and Prosper Systems shall not issue any new passwords to any such individual.

- 3.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property, and Prosper Systems reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.3 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - (c) use the Services and/or Documentation to provide services to third parties;
  - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as permitted by this Agreement.
- 3.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Prosper Systems.
- 3.5 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3.6 The Customer shall:
- (a) provide Prosper Systems with:
    - (i) all necessary co-operation in relation to this Agreement; and
    - (ii) all necessary access to such information as may be required by Prosper Systems; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
  - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
  - (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Prosper Systems, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
  - (f) ensure that its network and systems comply with the relevant specifications provided by Prosper Systems from time to time; and
  - (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Prosper Systems data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

#### **4. SERVICES**

- 4.1 Prosper Systems shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 Prosper Systems shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out outside of Normal Business Hours; and
  - (b) unscheduled maintenance performed during Normal Business Hours, provided that Prosper Systems has used reasonable endeavours to give the Customer at least two Normal Business Hours' notice in advance.
- 4.3 Prosper Systems will, as part of the Services and at no additional cost to the Customer, provide the Customer with Prosper Systems standard customer support services during Normal Business Hours in accordance with Prosper Systems Support Services Policy in effect at the time that the Services are provided. Prosper Systems may amend the Support Services Policy in its sole and absolute discretion from time to time.

#### **5. PROSPER SYSTEMS' OBLIGATIONS**

- 5.1 Subject to the terms and conditions of this Agreement, Prosper Systems hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 5.2 Subject to clause 5.4, Prosper Systems warrants that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.3 Clause 5.2 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Prosper Systems instructions, or modification or alteration of the Services by any party other than Prosper Systems or Prosper Systems duly authorised contractors or agents. If the Services do not conform with clause 5.2, Prosper Systems will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clause 5.2.
- 5.4 Notwithstanding the foregoing, Prosper Systems:
- (a) does not warrant that the Forecasting Data will be accurate or reliable and should therefore not be relied upon by the Customer. The Forecasting Data is indicative only;
  - (b) does not warrant that the Customer's use of the Services will be uninterrupted or error-free;
  - (c) does not warrant that the Services, Documentation and/or the Forecasting Data obtained by the Customer through the Services will meet the Customer's requirements; and
  - (d) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.5 Prosper Systems warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of the Services under this Agreement.

## 6. CHARGES AND PAYMENT

- 6.1 The Subscription Fees payable by the Customer during the Initial Subscription Term (where applicable) shall be as stated in an Order.
- 6.2 From the commencement of the first Renewal Period and each Renewal Period thereafter, the Customer shall pay the Subscription Fees to Prosper Systems in accordance with the relevant Order. The Customer shall pay the Subscription Fees either annually or monthly in arrears for each Renewal Period, as agreed in the applicable Order. For the avoidance of doubt, in the event that payments are made on a monthly basis, in the event of the termination of this Agreement for any reason, all Subscription Fees from the effective date of termination until the end of the then current Renewal Period will become immediately due and payable by the Customer, together with any outstanding Subscription Fees due at the effective date of termination.
- 6.3 The Customer must pay each invoice within 14 days after the date of the invoice.
- 6.4 If Prosper Systems has not received payment of an invoice by the applicable due date, and without prejudice to any other rights and remedies of Prosper Systems:
- Prosper Systems may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Prosper Systems shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Barclays Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.5 All amounts and fees stated or referred to in this Agreement:
- shall be payable in pounds sterling;
  - are non-cancellable and non-refundable;
  - are exclusive of value added tax, which shall be added to Prosper Systems invoices (where applicable).
- 6.6 If, at any time whilst using the Services, the Customer exceeds the amount of storage space specified in the Documentation, Prosper Systems shall charge the Customer, and the Customer shall pay, Prosper Systems then current excess data storage fees.
- 6.7 Prosper Systems shall be entitled to increase the Subscription Fees and/or the excess storage fees payable at the start of each Renewal Period upon 30 days' prior notice to the Customer and the applicable Order shall be deemed to have been amended accordingly.

## 7. CUSTOMER DATA AND INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer is responsible for uploading the relevant Customer Data periodically.
- 7.2 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 7.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Prosper Systems to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Prosper Systems in accordance with its archiving procedure in effect from time to time. Prosper Systems shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Prosper Systems to perform services related to Customer Data maintenance and back-up).
- 7.4 The Customer agrees to ensure that no personally identifiable information will be uploaded to the Software.
- 7.5 The Customer hereby grants to Prosper Systems a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence to use the Customer Data in relation to any Prosper Systems services from time to time.
- 7.6 The Customer acknowledges and agrees that Prosper Systems and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.
- 7.7 Prosper Systems hereby grants to the Customer a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence to use the Forecasting Data solely for the Customer's internal business operations.
- 7.8 Prosper Systems warrants that it has all Intellectual Property Rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 7.9 The Customer will indemnify and keep Prosper Systems indemnified against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Prosper Systems arising out of or in connection with any claim in relation to:
- any Customer Data or any other content, information or materials provided by the Customer to Prosper Systems directly or indirectly pursuant to the Services which are of a defamatory, offensive or illegal nature or that infringe data protection or privacy rights; and
  - actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any Customer Data or any other content, information or materials provided by the Customer to Prosper Systems pursuant to the Services.

## 8. CONFIDENTIALITY

- 8.1 A party ("**Receiving Party**") will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("**Confidential Information**").
- 8.2 In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
- to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under this Agreement;
  - not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its officers, employees, consultants, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under this Agreement and provided that such officers, employees, consultants, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
  - to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
- 8.3 Nothing in this Agreement will prevent the Receiving Party from using or disclosing any Confidential Information which:
- is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
  - the Receiving Party can show was: (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation

of confidence; or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;

- (c) the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
- (d) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
- (e) is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.

8.4 This clause 8 shall survive termination of this Agreement, however arising.

## 9. LIMITATION OF LIABILITY

9.1 This clause 9 sets out the entire financial liability of Prosper Systems (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Services, the Documentation, the Forecasting Data or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

9.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services, the Documentation and the Forecasting Data by the Customer, and for conclusions drawn from such use. Prosper Systems shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Prosper Systems by the Customer in connection with the Services, or any actions taken by Prosper Systems at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services, the Documentation and the Forecasting Data are provided to the Customer on an "as is" basis.

9.3 Nothing in this Agreement limits or excludes the liability of either party for death or personal injury resulting from negligence or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.

9.4 Subject to clause 9.3 and excluding any provisions in this Agreement where an indemnity is provided by either party:

- (a) neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) each party's total liability to each other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement will be limited to:
  - (i) a sum of £1,000 during the Initial Subscription Term; and
  - (ii) the Subscription Fees paid or payable for the Services giving rise to such liability during the then current Renewal Period.

## 10. TERM AND TERMINATION

10.1 This Agreement shall, unless otherwise terminated as provided in this clause 10, commence on the Effective Date and shall continue for the duration of the Initial Subscription Term. Subject to clause 10.2, this Agreement will automatically terminate at the end of the Initial Subscription Term.

10.2 Provided that the Customer expressly opts-in to continue with the Services following the end of the Initial Subscription Term, this Agreement shall be automatically renewed for successive periods of 12 months (each a "**Renewal Period**"), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the then current Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

10.3 Without limiting any other rights or remedies, either party ("**Terminating Party**") may terminate this Agreement with immediate effect by providing written notice to the other party ("**Defaulting Party**") on or at any time after the occurrence of any of the events specified below:

- (a) a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so;
- (b) an event, including (or similar in nature to) the following:
  - (i) the Defaulting Party is unable to pay its debts as they fall due;
  - (ii) the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily;
  - (iii) a receiver is appointed in respect of the whole or any part of the Defaulting Party;
  - (iv) a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
  - (v) the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

10.4 On termination of this Agreement for any reason:

- (a) All licences for the Customer and any Authorised Users to use the Services and the Documentation shall immediately terminate;
- (b) Prosper Systems will have no obligation to repay any charges paid by the Customer;
- (c) excluding any Customer Data and Forecasting Data, each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

10.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

10.6 In the event that the Customer breaches this Agreement in any way, the Customer agrees to reimburse Prosper Systems for any fees it incurs (including court fees, legal fees or other professional fees) in order to enforce the terms contained herein.

## 11. FORCE MAJEURE

Neither party shall in any circumstances have any liability to the other party under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes or illness

involving the workforce of Prosper Systems, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. If the force majeure event continues for a period of four weeks or more, the unaffected party may terminate this Agreement with immediate effect by providing the other party with written notice.

## **12. VARIATION**

- 12.1 Subject to clause 6.7, Prosper Systems reserves the right at any time to update this Agreement and to impose new or additional terms. If the Customer continues to use the Services after being notified of any such modification or additional terms, the Customer will be deemed to have accepted these changes and they will be incorporated into this Agreement.
- 12.2 Subject to clause 12.1, no variation of this Agreement or an Order will be effective unless it is in writing and signed by the authorised representatives of the parties.

## **13. MISCELLANEOUS**

- 13.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that are not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 13.2 Prosper Systems maintains Personal Indemnity Insurance for the provision of its services with up to £2 million cover.
- 13.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.4 The Customer shall not, without the prior written consent of Prosper Systems, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Prosper Systems may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 13.5 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 13.6 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 13.7 If any provision or part-provision of this Agreement are or become invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 13.8 Any Order may be signed in counterparts. Each signed copy will be deemed to be an original, but all signed copies, when taken together, will constitute one and the same agreement.
- 13.9 All notices must be in writing and are deemed given when mailed by registered or certified mail, return receipt requested, to the other party's main business address. It is agreed that serving notice by email or fax will not be an effective method of providing notice of a claim under this Agreement.

## **14. LAW AND JURISDICTION**

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.