

ProsperOps® Service Terms

These ProsperOps Service Terms (these “Service Terms”) are between ProsperOps, Inc., a Delaware corporation (“ProsperOps,” “we,” “us,” or “our”) and the person who submits an Order for ProsperOps’ services (“you” or “your”).

If you register for a beta version of our Services, the applicable provisions of the Service Terms will also govern such use.

By accepting these Service Terms, by clicking a box indicating your acceptance; by executing an Order that references these Service Terms; or, by using such Services, you agree to the Service Terms. If you do not have such authority to enter into the Order and these Service Terms, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the Services.

You may not access the Services if you are our direct competitor, except with our prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

Capitalized words in these Service Terms have special meanings. See Section 1 (Defined Terms) of these Service Terms.

ProsperOps may modify these Services Terms at any time, but modifications are not effective for Orders that are in place prior to the modification until the Order renews. See Section 10.19 (Changes to Online Terms).

If you have any questions about these Services Terms, please contact legal@prosperops.com.

1. Defined Terms

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means these Services Terms and any Order.

“Applicable Law” means any and all governmental laws, rules, regulations or orders that are applicable to a particular party’s performance under the Agreement.

“Documentation” means our user and administration guides, FAQs, and other materials designed to explain the use of the Services, but not including any marketing materials or publicity.

“Order” means an online order or order form prepared and accepted by ProsperOps that describes the Services and Plan you selected, as a paying customer and the related charges and term.

“Plan” means the ProsperOps Services on either a month-to-month basis or term as defined in the Order.

“Privacy Policy” means ProsperOps’ Privacy Policy currently published at <https://prosperops.com/legal/privacy-policy/>, as it may be updated from time to time.

“Services” means the ProsperOps cost optimization services more fully described in your Order, communications tools, dashboard, portals, reporting tools, APIs, and all related services and Support.

“Site” means dev.prosperops.com, or any other website operated by ProsperOps for the purpose of offering or providing Services, including any subdomains.

“Support” means the use of the Documentation, and any live human support that is included with the Plan that you purchase.

“Term” means the initial term and any renewal terms, collectively.

“User Personal Data” means identifying information related to authorized users, such as name, user name, billing information, and email address, furnished by you in connection with your access and use of the Services.

“Your Data” has the meaning given in Section 4 (Your Data).

2. Services

2.1 Services. ProsperOps agrees to provide the Services for the Term on the terms and conditions stated in the Order and these Service Terms. ProsperOps makes the following commitments:

2.1.1 The Services will include those features listed on the ProsperOps Plan you select as described on the ProsperOps website on your Order submission date or other Plan document provided to you at the time of your Order. The Services include updates that ProsperOps makes generally available to its other customers, subject to any charges and terms that may apply to new features.

2.1.2 ProsperOps will use commercially reasonable efforts to make the Services available to you 24 per hours per day, 7 days per week, year-round, excluding reasonable maintenance. If your Plan includes a service level commitment or “SLA”, ProsperOps makes the commitment to you described in that SLA.

2.1.3 You will have access to ProsperOps’ online support Documentation; and

2.1.4 ProsperOps will use commercially reasonable efforts to provide support via phone, chat and ticket beginning each Monday at 9 a.m. and ending Friday at 5 p.m., United States Central time, excluding federal public holidays in the United States and other ProsperOps announced support holidays.

2.2 Service Levels or SLA. If your Plan includes an SLA, the SLA is subject to the following terms:

2.2.1 Credit Requests. To receive a credit, you must request a credit no later than ten (10) days following the day that the ProsperOps commitment was not met. You must submit your request to help@prosperops.com.

2.2.2 General SLA Terms. ProsperOps is not required to apply credits for any month that exceeds the charges due from you for that month. ProsperOps is not required to apply unused credits to past or future months for your Services or to apply them to other services. ProsperOps is not required to apply a credit if any charges due from you are overdue, or if your account has been suspended or terminated for your violation of the Order or Service Terms. If you are entitled to a credit after the time that you have paid your final charges to ProsperOps, ProsperOps will issue the credit to you in the form of a credit to your payment card or account. Time periods are measured with reference to time-stamps in the ProsperOps system or other reliable ProsperOps records. The credit remedies provided in this SLA are your sole and exclusive remedy for damages arising from ProsperOps' failure to meet a commitment for which a credit is provided.

2.3 Fraud Check. ProsperOps may refuse to provide Services if you fail its fraud check. If you fail the fraud check after your account has been provisioned, ProsperOps will close your account, and refund any pre-paid charges.

2.4 Internal Use Only, No Resale of Services. You may use the Services only in connection with your own services. If you wish to use the Services to provide cost optimization services for others you must contact ProsperOps and make other arrangements.

2.5 Beta Services. From time to time, ProsperOps may invite you to test "Beta" Services at no charge. Beta Services will be designated as test, beta, pilot, limited release, developer preview, non-production, evaluation or with a similar description. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. ProsperOps may terminate a Beta Service at any time, for any or no reason. ProsperOps may discontinue Beta Services at any time in its sole discretion and may never make the Beta Services generally available. If a generally available version is released, there may not be an automatic update path from the Beta version to the generally available version. If not earlier terminated, any Beta Services trial period will expire on the date that the Beta Service is released on a generally available basis. Beta Services are provided AS IS, and ProsperOps has no liability for any harm or damage arising out of or in connection with a Beta Service.

2.6 Services Evaluation Period. When you first create an account for evaluation of our Services you will not be billed any charges until the effective date of the Order for Services. Any additional terms and conditions provided during the evaluation period are incorporated into this Agreement by reference and are legally binding.

NOTWITHSTANDING ANYTHING IN THESE SERVICE TERMS, DURING THE EVALUATION PERIOD THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND WE SHALL HAVE NO LIABILITY TO YOU DURING THE EVALUATION PERIOD.

3. Your Obligations

3.1 Charges. You must pay your charges when due. You must not use or attempt to use the Services in a way that undermines ProsperOps’ ability to correctly calculate its charges.

3.2 Your Security Obligations. You must use reasonable and appropriate security precautions in connection with your use of the Services, such as requiring your users to establish secure passwords and using commercially reasonable efforts to protect your systems and data from malware. You will notify Us promptly of any unauthorized access or use of the Services and use the Services only in accordance with the Agreement.

3.3 Authorized Users. You may not authorize anyone to use your Services account other than your employees or other personnel. You will be responsible for your users’ compliance with this Agreement.

3.4 Authorization. You will authorize ProsperOps as an authorized user on your cloud account(s) in accordance with the instructions provided during Services configuration. Additionally, in accordance with the Plan, Order, and guidance you provide to us, you authorize us to manage and make reserved instance and/or savings plan spend commitments on your behalf, including but not limited to modifications, exchanges, purchases, renewals, and sales.

3.5 Acceptable Use. You may not use the Services in connection with any illegal or abusive activities, as determined by ProsperOps in its reasonable discretion.

3.6 Compliance with Law. You must use the Services in compliance with applicable law and government regulations.

3.7 Representations and Warranties. You represent and warrant to ProsperOps as of the effective date of each Order and on an ongoing basis that: (i) the information you submit about yourself and your activities to establish a Services account with ProsperOps and place an Order is true, correct, and complete, (ii) you have not been the target of any legal or regulatory investigations or proceedings in connection with your business activities, and (iii) Your Data was collected in accordance with applicable law, and that you have all necessary rights and authority to use and process Your Data as contemplated by the Agreement.

3.8 Rights in Technology/Intellectual Property. You may not copy any part of the Services or mirror the Services on any site or system, except that you may download and print copies of Documentation for the Services as reasonably necessary for your permitted use of the Services, provided that you use the Documentation in the exact form published, retain all branding and proprietary notices, and do not transfer the Documentation to any other person. You may not reverse engineer or attempt to discover any underlying algorithm or method embodied by the

Services or ProsperOps' other technology except to the extent applicable law permits such activity notwithstanding this limitation, and then on thirty (30) days advance written notice to ProsperOps. You may not disclose to any third party any benchmarking or other test or evaluation you conduct on the Services. You may not use the ProsperOps Services for the purpose of creating a competing technology. Except for rights expressly granted in this Agreement, ProsperOps shall own and retain all right, title and interest in and to (a) the Services, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Services or Support, and (c) all intellectual property rights related to any of the foregoing. No rights in Intellectual Property may arise by implication or estoppel.

4. Your Data

4.1 The data that you transmit to the Services, is accessible via public cloud APIs or UIs, or you create by means of the Services is "Your Data." As between you and ProsperOps, you own and retain ownership and all rights in Your Data and ProsperOps may use Your Data only for the purpose of providing the Services and exercising its legal rights and remedies in connection with the Agreement. Notwithstanding the foregoing, we shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning user accounts and data derived therefrom), and we will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with our business. No rights or licenses are granted except as expressly set forth herein. The Privacy Policy does not apply to Your Data.

4.2 You will not, directly or indirectly, provide Us with any personal data except for User Personal Data, and will take appropriate measures to prevent access to personal data by ProsperOps. Further, you will not, directly or indirectly, provide Us with access to any personal or sensitive data that is stored or processed on or by the public cloud services, and will take appropriate measures to prevent access to the public cloud services beyond what is required by the Services.

5. Privacy and Security

5.1 User Personal Data is required by Us to provide and support the Services, for example, to authenticate authorized users and to respond to requests for Support. You shall ensure that all User Personal Data is accurate and correct at all times during the Term. ProsperOps shall only use User Personal Data in accordance with the Privacy Policy and Applicable Law. Except for limited User Personal Data, you acknowledge the Service is not intended for use by you or any authorized user to transfer, process, use or store information relating to an identified or identifiable natural person, and you agree to not use the Service for such purpose.

5.2 Without limiting the foregoing, you represent and agree that that you shall not include in Your Data any Sensitive Personal Information. For such purpose, "**Sensitive Personal**

Information” means any information that: (a) must be protected in accordance with specific or heightened security requirements imposed by applicable law or industry standards; or (b) would require notification to government agencies, individuals or law enforcement if subject to unauthorized access, use or disclosure.

5.3 ProsperOps shall maintain throughout the Term technical security measures to protect Your Data and User Personal Data from accidental loss and from unauthorized access, use, alteration or disclosure which provide a level of security appropriate to the nature of the data and the risk represented by its use and storage.

6. Charges and Payments

6.1 Payment Account. Unless you have made other arrangements with ProsperOps, you must authorize and maintain a current valid means for ProsperOps to collect its charges for the Services via payment card or ACH at all times during the Term.

6.2 Billing Cycle. Charges are billed on a monthly basis unless otherwise stated in the Order. Your “billing cycle” begins on your Services activation date and will be aligned to a calendar month boundary the first full month after activation. The savings share charge will be billed in arrears at the beginning of each month for the Services rendered the prior month based on actual usage measured in dollar savings, as defined in the Plan document posted on the ProsperOps Site or in your Order.

6.3 Charges. The charges for the Services are stated in the Plan document posted on the ProsperOps Site or in your Order. ProsperOps may not increase the charges during your initial Order term, but may increase its charges for any renewal term by giving you notice of the increase at least thirty (30) days prior to the first day of your next billing cycle. Charges are billed and must be paid in United States Dollars. You must pay any charges associated with your active Services even if you do not use the Services. The savings share charge for the Services are usage based and will be billed based on usage measured in dollar savings as defined in the Plan document posted on the ProsperOps Site or in your Order. Charges are non-refundable.

6.4 Sales Tax. The stated charges do not include any sales, use, VAT or like taxes (“Sales Tax”). You must pay any applicable Sales Tax that is properly invoiced by ProsperOps.

6.5 Invoices. ProsperOps may invoice the charges on or after the following times: (i) for monthly minimums, base charges, and other fixed monthly recurring charges, the first day of each billing cycle, (ii) for usage charges and other variable charges, the last day of each billing cycle, and (iii) for one-time charges (such as pre-paid charges), the day you submit the Order that includes the charge. ProsperOps may invoice any applicable Sales Tax with the invoice for the related Service, or separately. You shall be responsible for all taxes associated with Services other than U.S. taxes based on Our net income.

6.6 Payments. Unless you have made other arrangements, ProsperOps may charge your payment card or account on the date of invoice. ProsperOps may suspend or terminate your Services or the Agreement if its charge to your payment card or account is rejected or not timely paid for any

reason. ProsperOps may charge interest on overdue amounts at the lesser of 1.5% per month or the highest non-usurious amount permitted by applicable law. If ProsperOps takes legal action to collect an overdue amount, you must also pay ProsperOps' reasonable costs of collection, such as attorney fees and court costs. If ProsperOps suspends your account for late payment, you may be charged a reasonable reinstatement fee, not to exceed the base charge of your Plan.

6.7 Charges on Termination.

6.7.1 Upon termination of the Agreement or Services, ProsperOps will immediately bill the savings share charge for Services provided month-to-date. The savings share charge encompasses savings generated over the term of a ProsperOps managed reserved instance and/or savings plan, but is collected monthly as savings are realized. If you terminate Services prior to the term expiration of a ProsperOps managed reserved instance and/or savings plan, the unrealized savings share charges are due for the remaining reserved instance and/or savings plan terms (notwithstanding future instance changes that may require additional actions). As such, on termination of the Agreement or Services, ProsperOps will bill you for the unrealized future savings share of each reserved instance and/or savings plan where ProsperOps has provided Service.

6.7.2 If ProsperOps discounts your charges in exchange for your commitment to an Order term length of longer than one month and the Order is terminated prior to the end of the committed term then, unless the termination was by ProsperOps for convenience, or by you for ProsperOps' uncured breach, you must pay an early termination fee equal to the difference of the standard charge and the discounted charge in addition to the charges set forth in Section 6.7.1.

7. Term, Termination, Suspension

7.1 Term. Unless otherwise stated in your Order, the initial term of each Order begins on Order submission and continues until the end of your first billing cycle. On expiration of the initial term, the Order automatically renews for consecutive renewal terms of one calendar month each (or any longer period described in the Order), unless you cancel or ProsperOps gives a notice of non-renewal before the last day of the initial term or then current renewal term, as applicable.

7.2 Termination.

7.2.1 Subject to Section 6.7, the Services may be cancelled at any time by you via the console and by ProsperOps on notice.

7.2.2 Subject to Section 6.7, either party may terminate an Order, or the Agreement, on written notice if the other party is in material violation of any term of an Order or these Service Terms, provided that if the violation is curable the terminating party must first give the other party a written notice describing the violation in reasonable detail and at least ten (10) days to cure the violation. ProsperOps may terminate an Order and the Agreement at any time on written notice if you or your personnel are abusive to ProsperOps personnel.

7.3 Suspension. ProsperOps may suspend your access to the Services during any period that you are in material breach of the Agreement or your access to the Services creates a material security vulnerability. ProsperOps will give you at least two (2) business days' advance notice of the suspension, unless the suspension is made under emergency circumstances or to protect the security of the Services. ProsperOps will reinstate your access to the Services when the grounds for suspension are cured unless ProsperOps has already terminated the Agreement as described in this Section 7.

7.4 Surviving Provisions. The following sections survive expiration or termination of the Agreement: Charges and Payment, Confidentiality, Indemnification, Limitation of Liability, General, Term, Termination and Suspension, Governing Law and Venue, Feedback, Informal Dispute Resolution, Arbitration, Notices, and any other terms that by their nature are intended to survive expiration or termination.

8. Remedies, Disclaimers, Indemnification, Limitations

8.1 SLA Credits. If your Plan includes an SLA that has a credit remedy, the credit is the sole and exclusive remedy for ProsperOps' failure to meet the SLA.

8.2 Warranty Remedy. If the Services fail to meet any other warranty stated in the Agreement, ProsperOps will attempt to cure the failure or if it is unable to cure the failure through commercially reasonable efforts will refund the charges paid for the billing cycle during which the failure occurred. However, to be eligible for a warranty remedy under this Section, you must give a written notice describing the failure no later than ten (10) days following the end of the billing cycle and cooperate with ProsperOps' reasonable efforts to cure the failure. The remedies stated in this Section are your sole and exclusive remedy for ProsperOps' warranty breach.

8.3 No Other Warranty. Except as expressly stated in these Services Terms or an SLA, the Services are provided AS IS. ProsperOps disclaims any implied warranties, such as a warranty of merchantability, fitness for a particular purpose, and non-infringement, and any representation or warranty that may arise through a course of dealing. You acknowledge that the use of the Service may not be uninterrupted, error free, or completely secure. If applicable law requires ProsperOps to make a warranty notwithstanding this disclaimer, then the warranty is made for a period of thirty (30) days from the date that it is deemed to have been made, and your sole and exclusive remedy for a breach of the warranty is a refund of charges paid for the Services covered by the warranty. You represent that you have not relied on any representation or warranty other than those stated in these Services Terms.

8.4 Indemnification. You agree that if a third party asserts a legal claim against ProsperOps or any of its officers, members, managers, employees, staff, personnel, agents, licensors or suppliers (the "ProsperOps Defendants") arising from your violation of these Services Terms or any Order, including your breach of a representation or warranty, or if your customer or end user asserts a legal claim against any of the ProsperOps Defendants on any basis other than ProsperOps' gross negligence or willful misconduct, you will pay all reasonable costs of defending the claim, including reasonable attorney fees, and any damages awarded to the third party or paid to the third party by ProsperOps as a reasonable settlement. You agree that

ProsperOps may control the defense of the claim at its option, or may require you to defend the claim directly. If ProsperOps elects to control the defense of the claim, you will reimburse ProsperOps for its reasonable defense costs and expenses as incurred.

8.5 Limitation of Liability. IN THE EVENT YOU HAVE A LEGAL CLAIM AGAINST PROSPEROPS OR ANY OF ITS OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, STAFF, PERSONNEL, AGENTS, SUPPLIERS OR LICENSORS (THE “PROSPEROPS DEFENDANTS”), YOU AGREE THAT THE MAXIMUM TOTAL AMOUNT OF MONEY YOU CAN RECOVER FROM ANY OR ALL OF THEM CANNOT EXCEED THE AMOUNT OF CHARGES YOU HAVE PAID OR THAT ARE PAYABLE FOR SERVICE FOR THE SIX (6) MONTHS PRIOR TO THE DATE THE CLAIM AROSE, UNLESS THE LEGAL CLAIM IS BASED ON A PROSPEROPS DEFENDANT’S INTENTIONAL MISCONDUCT OR IS FOR PERSONAL INJURY OR DEATH RESULTING FROM THE NEGLIGENCE, RECKLESSNESS OR INTENTIONAL MISCONDUCT OF A PROSPEROPS DEFENDANT. IN ADDITION, YOU AGREE THAT IN NO EVENT ARE YOU ENTITLED TO RECOVER ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING DAMAGES FOR LOST PROFITS, OPPORTUNITIES, GOODWILL, OR USE), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.6 General. You acknowledge that ProsperOps has set its charges and entered into the Order in reliance on the limitations of remedies and liability stated in these Terms, and that these limitations reflect an agreed allocation of risk between you and ProsperOps. The limitations stated in this Section shall apply to any liability arising from any cause of action whatsoever, whether in contract, tort, commercial code, strict liability or otherwise, even if a limited remedy fails of its essential purpose. If these limitations as written are not permitted by applicable law, they shall apply to the extent permitted by applicable law.

9. Confidential Information

Confidential Information. Any non-public information that you learn about ProsperOps or its Services as part of the relationship contemplated by these Services Terms is ProsperOps’ Confidential Information. Your Data and your User Personal Data is your Confidential Information. Each of you and ProsperOps agree not to use or disclose the other’s Confidential Information except for the purpose of providing or using the Services, as applicable, or to exercise legal rights in connection with an Order. Each of you and ProsperOps agree to use reasonable care to protect the confidentiality of the other’s Confidential Information and to return or destroy the other’s Confidential Information on request, except as necessary for reasonable and customary business record-keeping purposes. Each of you and ProsperOps is responsible for a breach of this Section by any person to whom it has disclosed the other’s Confidential Information. Notwithstanding the foregoing, ProsperOps may disclose your Confidential Information in response to a subpoena or request from law enforcement.

10. Miscellaneous

10.1 Feedback. You hereby license to ProsperOps any feedback or suggestions that you may provide regarding the Services or ProsperOps' other existing or proposed products or services on a perpetual, irrevocable, royalty free, worldwide, unconditional, fully sublicensable and transferable basis, including the right to make, have made, use, sell, offer to sell, import, copy, display, perform, modify, distribute in modified or unmodified form, and commercialize any intellectual property, without accounting to you. You agree that you will not assert, or authorize, assist, or encourage any third party to assert, against ProsperOps or any of its affiliates, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Service or any of our other products or services that you use.

10.2 Governing Law and Venue. The Agreement is governed by and should be interpreted under the laws of the State of Texas, and the United States of America, as applicable, without giving effect to any conflicts of law principles that would require the application of the law of a different jurisdiction. The parties expressly and irrevocably disclaim and waive the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Act. Exclusive venue for all disputes arising out of the Agreement shall be the state or federal courts of Travis County, Texas, and each party agrees not to bring an action in any other venue. You waive all objections to this venue and agree not to dispute personal jurisdiction or venue in these courts.

10.3 Notices. Your notices must be submitted via ticket on the customer portal. ProsperOps' notices to you will be given to all account owners at the email addresses in the ProsperOps portal. If you send a notice of breach of the Agreement, a legal dispute, a legal claim, or other legal matter, you must copy your notice to legal@prosperops.com. Notices are deemed given, received and effective as of the time transmitted by electronic mail, or if that time does not fall on a business day, as of the beginning of the first business day following the time transmitted. Notices must be given in the English language. A party may change its address for notice by giving notice in the manner stated in this Section.

10.4 Arbitration. Except for certain requests for injunctive relief as described below, each of you and ProsperOps agree that any dispute related to the Services, an Order or these Services Terms shall be submitted to binding arbitration in Austin, Texas. The arbitration shall be conducted by one arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted in person unless each of party agrees to a telephonic or written submissions procedure. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award. Each party waives any right to a trial by jury, and agrees that disputes will be resolved through arbitration. No claim subject to this provision may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant. Each party agrees not bring a claim related to the Services or the subject matter of an Order or these Services Terms more than two years after the time that the claim accrued. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

10.5 Informal Dispute Resolution. Each party agrees that it will not file a lawsuit or other legal action in connection with the Services, any Order, or these Services Terms, unless it has first given the other party written notice of the dispute and attempted to resolve the dispute through good faith negotiation.

10.6 Injunctive Relief. Notwithstanding anything in this Agreement to the contrary, this Agreement does not prohibit, condition or delay a party's right to seek injunctive relief in any court of competent jurisdiction to address the other party's infringement or misappropriation of its intellectual property, or the other party's breach of its confidentiality obligations under this Agreement.

10.7 Export Compliance. The Services may be subject to export laws and regulations of the United States and other jurisdictions. You may not permit users to access or use the Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation, or in a manner that causes ProsperOps to be in violation of U.S. export laws, even if the use is permitted the laws applicable to you. Each party represents that it is not on any restricted persons list maintained by the U.S., Canada, United Nations Security Council, or any member of the European Union.

10.8 Anti-Corruption. Each party represents that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from the other's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, it will promptly notify the other party.

10.9 Force Majeure. Except for your payment obligations, neither party is in violation of the Agreement if the failure to perform is due to an event beyond that party's reasonable control, such as a significant failure of the power grid or Internet, denial of service attacks, failure of non-ProsperOps application, third-party platform unavailability, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other acts or events for which precautions are not generally taken in the industry.

10.10 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Orders), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.11 Publicity. Unless otherwise agreed in an Order, you agree that ProsperOps may publicly disclose that it is providing Services to you and may use your name and logo to identify you in promotional materials, including press releases. You may not issue any press release or other publicity regarding this Agreement or the relationship or transactions contemplated by this Agreement, use the ProsperOps name or logo or other identifying indicia, or publicly disclose that you are using the Services without the prior written consent of ProsperOps. You agree to consider ProsperOps' requests to participate in the development of product whitepapers,

customer testimonials for Web publication, and other like materials to be published on the Web, to provide key performance indicator data and other information for use by ProsperOps as part of its marketing materials, and to serve as a customer referral.

10.12 Relationship of the Parties. The parties are independent contractors. Neither party is the agent of the other, and neither party is authorized to make any representations, contract, or commitment on behalf of the other. The use of the words “partner” or “partnership” in this Agreement or otherwise refers only to a business relationship, and does not create or reflect any legal partnership, joint venture, or other fiduciary or other special relationship between the persons described as partners. The parties do not agree to any exclusivity in regards to the subject matter of this Agreement and each party is free to contract with third parties, including competitors of the other party, for transactions of the type covered by this Agreement in any market, worldwide.

10.13 Interpretations. In calculating any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run is not to be included. The term “person” refers to any legal person, and may mean a natural person (individual), a legally created person (such as an entity, trustee, or executor), or an entity (such as a corporation, partnership, or limited liability company). The word “personnel” refers to a person’s employees and individual contractors who are under the person’s direct supervision. The use of the word “including” should be read to mean “including, without limitation.” All references to monetary amounts mean United States Dollars. The term “parties,” either in lower- or upper-case form, refers to the signatories to this Agreement. For notice purposes, the words “business day,” “business hours,” or the like means Monday – Friday, 9:00 a.m. – 5:00 p.m., United States Central Time, excluding federal public holidays in the United States. A reference to “day” shall mean a calendar day, unless expressly designated as a “business” day. All software and other technology provided for your use is licensed and not sold; any references to a sale or purchase of software or other technology means the sale or purchase of a subscription service. Any requirement in this Agreement that a statement be written, in writing, or a like requirement is satisfied by an email or other digital form of writing unless expressly stated otherwise. Nouns stated in the singular imply the plural as indicated by the context, and pronouns that are gender specific refer to either gender. The section captions in this Agreement are for convenience only; they are not part of this Agreement and may not be used to interpret the terms of this Agreement.

10.14 Third-Party Beneficiaries. There are no other third-party beneficiaries under this Agreement.

10.15 Severability. In the event one or more of the terms of this Agreement are adjudicated invalid, illegal, or unenforceable, the adjudicating body may either interpret this Agreement as if such terms had not been included, or may reform such terms to the limited extent necessary to make them valid, legal or enforceable, consistent with the economic and legal incentives underlying the Agreement.

10.16 Changes to the Services. You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by ProsperOps regarding future functionality or features. You acknowledge that

ProsperOps may modify or suspend any of its Services offerings at any time. If a modification or suspension materially and adversely affects your use of the Services, you may terminate the Agreement by giving written notice no later than 30 days following the date of the change and receive a refund of any prepaid charges as your sole and exclusive remedy.

10.17 General Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

10.18 Representation by Individual Submitting the Order. If the individual submitting the Order represents that: (i) if the individual submits the Order on his or her own behalf (including as a sole proprietor), the individual is old enough to enter into contracts and otherwise has the legal capacity to enter into contracts under applicable law; or (ii) if the individual submits the Order on behalf of a company or other legal entity, the individual has the legal power and authority to bind that entity to the Order and these Service Terms.

10.19 Changes to Online Terms. ProsperOps may amend these Services Terms at any time in its sole discretion. The amended Services Terms will become effective as to your Order on the first renewal of the Order that follows the publication of the amended terms. If the amended terms materially and adversely impact your use of the Services, you may terminate the Agreement by giving written notice no later than thirty (30) days following the date the new terms are published and receive a refund of prepaid charges as your sole and exclusive remedy.

10.20 Entire Agreement and Order of Precedence. The Agreement is the entire agreement between you and ProsperOps regarding your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of these Service Terms or an Order will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any preprinted term or condition stated in any business form is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) these Services Terms, and (3) the Documentation. Your use of the Services is subject to all of the terms, conditions, and restrictions stated in your Order and these Service Terms, and any restrictions stated on a page on the Site that is part of your Order.

11. Flex Boost

11.1 Flex Boost Service. The Flex Boost Service is an optional additional service available to Customer that involves ProsperOps' management of Amazon EC2 Standard Reserved Instances ("SRIs") for additional cost optimization. If Customer wishes to use the Flex Boost Service it may complete the setup requirements defined below in Section 11.3.

11.2 Savings Share. Savings that result from the Flex Boost Services are "Flex Savings" as that term is defined in the Order and are subject to the Savings Share applicable to Flex Savings.

11.3 Account Requirements. To enable ProsperOps to provide the Flex Boost Service Customer shall: (i) register on the Amazon EC2 Reserved Instances Marketplace; and (ii) if necessary,

apply the latest version of the ProsperOps AWS account access policy which permits ProsperOps, on the Customer's behalf, to create, describe, and cancel SRI listings on the Amazon EC2 Reserved Instances Marketplace.

11.4 Term. This Section continues for the remainder of the current initial or renewal term of the Agreement, as applicable.

11.5 Early Termination of the Flex Boost Service. The Flex Boost Service is an optional feature that the Customer may terminate prior to expiration of the Term by giving written notice.

11.6 Flex Boost Genuine Buyback Guaranty.

11.6.1 For purposes of this Guaranty:

Qualifying Flex Boost SRIs means SRIs purchased as part of the Flex Boost Service in the Customer's account as of the date of Customer's notice of termination or non-renewal that Customer has asked to have removed in its notice of termination or non-renewal having an On Demand Equivalent Value up to \$250,000.

On Demand Equivalent Value means the EC2 usage covered by SRIs at the then-current AWS on-demand fee rate through the remaining SRI term. *For example, if a Flex Boost SRI has an on demand equivalent rate of \$1.00/hour and has exactly 180 days remaining on the term, the On Demand Equivalent Value is $\$1.00/\text{hour} \times 24 \text{ hours/day} \times 180 \text{ days} = \$4,320$.*

11.6.2 ProsperOps will refund to Customer the On Demand Equivalent Value of the Qualifying Flex Boost SRIs that remain in Customer's account sixty (60) days following the effective date of termination of the Flex Boost Service or termination or expiration of the Order(s) to which this Section is attached on the condition that: (i) Customer has provided at least sixty (60) days advance notice of termination or non-renewal, as applicable, and (ii) Customer continues to maintain ProsperOps account permissions as described in Section 3 (Account Requirements) above during the advance notice period. *For example, if the On Demand Equivalent Value of all Qualifying Flex Boost SRIs at the time of expiration or termination is \$270,000 and after 60 days ProsperOps has removed only \$220,000 of On Demand Equivalent Value of those SRIs, ProsperOps would issue a payment to Customer of \$30,000.*

11.7 General. For clarity, this Guaranty does not apply to inherited SRIs, SRIs purchased by the Customer or Flex Boost SRIs that Customer has not asked to have removed in its notice of termination or non-renewal. The refund shall be issued within ninety (90) days after the effective date of termination of the Flex Boost Service or the expiration or termination of the Order(s), as applicable. The refund described in Section 11.6 is Customer's **sole and exclusive remedy** for ProsperOps failure to meet the Flex Boost Guaranty.

ProsperOps is a registered trademark of ProsperOps, Inc.