

PROSPERON NETWORKS LIMITED

MSP SERVICES TERMS AND CONDITIONS

By entering into a Customer Contract (as defined below) you agree to these Terms and Conditions.

IT IS HEREBY AGREED

1. Interpretation

1.1 Capitalised terms used in these Terms and Conditions are defined in the Services Definition document. In addition, the following definitions and rules of interpretation apply in these Terms and Conditions:

“Agreement”	-these Terms and Conditions, the Customer Contract and the Services Definition.
“Affiliate”	-any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
“Applicable Laws”	-all applicable laws, statutes, regulation from time to time in force.
“Business Day”	-a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
“Business Hours”	-the period from 9.00 am to 5.00 pm on any Business Day.
“Change Requests”	-an individual configuration change request made by the Customer through the Change Control Procedure set out in the Services Description.
“Charges”	-the sums payable for the MSP Services as set out in the Customer Contract.
“Control”	-shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
“Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures”	-as defined in the Data Protection Legislation.
“Customer Networks”	-any computer or telecommunications networks, systems, data, equipment, including tools, cabling or facilities owned or licenced by the Customer, its agents, subcontractors or consultants which is accessed or used directly or indirectly in the supply of the MSP Services.

“Data Protection Legislation“	-the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);
“Intellectual Property Rights“	-patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
“Retail Price Index“	-as defined by the UK Office for National Statistics.
“Prosperon“	-Prosperon Networks Limited, the contracting party to the Customer Contract and provider of the MSP Services.
“Prosperon Personnel“	-IT engineers, data analysts or other persons qualified to provide the MSP Services who are either employed by or acting as sub-contractors of Prosperon.
Services Description	-the Prosperon Managed Services, Service Description Document which is subject to these Terms and Conditions.
“Term“	-has the meaning set out in clause 2.1.
“UK Data Protection Legislation“	-all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (the General Data Protection Regulation ((EU) 2016/679) as amended and incorporated into English law); the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
“VAT“	-value added tax chargeable in the UK.

1.2 Clause headings shall not affect the interpretation of these Terms and Conditions.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7 These Terms and Conditions shall be binding on, and enure to the benefit of, the parties to the Customer Contract and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time **under** that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **these Terms and Conditions** or to any other agreement or document referred to in these Terms and Conditions is a reference of these Terms and Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Terms and Conditions) from time to time.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
2. Commencement and duration
- 2.1 A legally binding contract between the parties incorporating these Terms and Conditions will be formed on signature by both parties of a Customer Contract and will remain in force, unless the Agreement is terminated earlier in accordance with clause 13 (Termination), until either party gives to the other party no less than 90 days' written notice to terminate. The Agreement shall expire 90 days after the date on which such notice is served (the "**Term**").
- 2.2 Prosperon shall provide the MSP Services from the date specified in the Customer Contract (the "**Effective Date**").
3. Prosperon's responsibilities
- 3.1 Prosperon shall provide the MSP Services in accordance with Good Industry Practice and substantially in accordance with the Services Description and the Customer Contract.

- 3.2 Prosperon warrants that:
- 3.2.1 it has the full capacity and authority to enter into and perform the MPS Services and that the Customer Contract is executed by a duly authorised representative of Prosperon; and
 - 3.2.2 all personnel and sub-contractors used by Prosperon in the performance of the MSP Services are adequately skilled and experienced for the activities they are required to perform.
- 3.3 Prosperon does not warrant that the Customer's use of the MSP Services will be uninterrupted or error-free or that the MSP Services will meet the Customer's requirements.
- 3.4 Prosperon 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 MSP Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities
- 3.5 The warranties in clause 3.2 shall not apply to the extent of any non-conformance caused by use of the MSP Services contrary to Prosperon's instructions.
- 3.6 If the MSP Services do not conform with any of the warranties in clause 3.2 as a result of a breach by Prosperon of such warranty, Prosperon will use reasonable commercial endeavours to correct 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 warranties in clause 3.2.
- 3.7 This Agreement shall not prevent Prosperon from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
4. Customer's obligations
- 4.1 The Customer shall:
- 4.1.1 co-operate with Prosperon in all matters relating to the MSP Services;
 - 4.1.2 provide, for Prosperon, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer Networks, and other facilities as reasonably required by Prosperon including any such access as is specified in the Services Description;
 - 4.1.3 provide to Prosperon in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) reasonably required by Prosperon in connection with the MSP Services and ensure that they are accurate and complete in all material respects;
 - 4.1.4 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 4.1.5 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's

provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

4.1.6 ensure that all the Customer Networks are in good working order and suitable for the purposes for which it is used in relation to the MSP Services; and

4.1.7 comply with any additional responsibilities of the Customer as set out in the Customer Contract (if any).

4.2 The Customer warrants that:

4.2.1 it has the full capacity and authority to enter into and perform the MSP Services and that the Customer Contract is executed by a duly authorised representative of the Customer;

4.2.2 it has the authority to grant any rights granted to Prosperon under these Terms and Conditions;

4.2.3 it will comply with and use the MSP Services in accordance with the Terms and Conditions and all applicable laws; and

4.2.4 it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for Prosperon to provide the MSP Services.

5. Non-solicitation and employment

5.1 The Customer shall not, without the prior written consent of Prosperon, at any time from the date on which any MSP Services commence to the expiry of six months after the expiry or termination of the Agreement, solicit or entice away from Prosperon or employ or attempt to employ any Prosperon Personnel who has been engaged in the provision of the MSP Services.

5.2 Any consent given by Prosperon in accordance with clause 5.1 shall be subject to the Customer paying to Prosperon a sum equivalent to 20% of the then current annual remuneration of the relevant Prosperon Personnel or, if higher, 20% of the annual remuneration to be paid by the Customer to that Prosperon Personnel.

6. Change control procedure

6.1 Change Requests shall be managed in accordance with the Change Control Procedure set out in the Services Description.

6.2 If the parties are unable to agree a Change Request, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26 (Multi-tiered dispute resolution procedure).

7. Charges and payment

7.1 In consideration of the provision of the MSP Services by Prosperon, the Customer shall pay the Charges set out in the Customer Contract.

7.2 Prosperon may increase the Charges on an annual basis with effect from each anniversary of the date of the Customer Contract in line with the percentage increase in the Retail Price Index in the preceding 12-month period.

- 7.3 Unless otherwise agreed in writing by Prosperon, the Charges are payable by the Customer annually in advance.
- 7.4 The Customer shall pay each invoice submitted to it by Prosperon within 30 days of receipt of the invoice, to a bank account nominated in writing by Prosperon from time to time.
- 7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Prosperon any sum due under the Customer Contract on the due date:
 - 7.5.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - 7.5.2 Prosperon may suspend part or all of the MSP Services until payment has been made in full.
- 7.6 All sums payable to Prosperon under the Customer Contract:
 - 7.6.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - 7.6.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Intellectual property rights
 - 8.1 In relation to the Managed Application, Prosperon
 - 8.1.1 and its licensors shall retain ownership of all IPRs in the Managed Application; and
 - 8.1.2 grants to Customer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to access and use the Managed Application during the Term for the purpose of receiving the MSP Services.
 - 8.2 In relation to the Customer Networks, the Customer:
 - 8.2.1 and its licensors shall retain ownership of all IPRs in the Customer Networks; and
 - 8.2.2 grants to Prosperon a fully paid-up, non-exclusive, royalty-free, non-transferable licence to access and use the Customer Networks during the Term for the purpose of providing the MSP Services to the Customer.
 - 8.3 Prosperon:
 - 8.3.1 warrants that the receipt, use of the MSP Services by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - 8.3.2 shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or

consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights, arising out of, or in connection with, the receipt, use of the MSP Services.

8.3.3 shall not be in breach of the warranty at clause 8.3.1, and the Customer shall have no claim under the indemnity at clause 8.3.2 to the extent the infringement arises from:

- (a) misuse or modification of the Managed Application other than by or on behalf of Prosperon; and
- (b) compliance with the Customer's specifications or instructions.

8.4 The Customer:

8.4.1 warrants that Prosperon's use of the Customer Networks in the performance of the MSP Services by Prosperon, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

8.4.2 shall indemnify Prosperon against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by Prosperon arising out of or in connection with any claim brought against Prosperon, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with performance of the MSP Services or use of the Customer Networks.

8.5 If either party (Indemnifying Party) is required to indemnify the other party (Indemnified Party) under this clause 8, the Indemnified Party shall:

8.5.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 8.3.2 or clause 8.4.2 (as applicable) (IPRs Claim);

8.5.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

8.5.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

8.5.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

9. Compliance with laws
 - 9.1 In performing its obligations under these Terms and Conditions, Prosperon shall comply with Applicable Laws.
 - 9.2 Prosperon shall have the right to make changes to the MSP Services or these Terms and Conditions required as a result of changes to the Applicable Laws without consent from the Customer provided that the Customer shall be given written notice of any material change to the MSP Services or these Terms and Conditions.
10. Data protection
 - 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
 - 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the customer is the controller and Prosperon is the processor. Clause 10.7 sets out the scope, nature and purpose of processing by Prosperon, the duration of the processing and the types of personal data and categories of data subject.
 - 10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Prosperon for the duration and purposes of these Terms and Conditions.
 - 10.4 Without prejudice to the generality of clause 10.1, Prosperon shall, in relation to any personal data processed in connection with the performance by Prosperon of its obligations under these Terms and Conditions:
 - 10.4.1 process that personal data only on the documented written instructions of the Customer unless Prosperon is required by Applicable Laws to otherwise process that personal data. Where Prosperon is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, Prosperon shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Prosperon from so notifying the Customer;
 - 10.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 10.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

- 10.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or Prosperon has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) Prosperon complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (d) Prosperon complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 10.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 10.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 10.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the personal data; and
- 10.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of Prosperon, an instruction infringes the Data Protection Legislation.
- 10.5 The Customer consents to Prosperon appointing the Third Party Processors identified in clause 10.7 as third party processors of personal data under these Terms and Conditions. Prosperon confirms that it has entered or (as the case may be) will enter with the third party processor(s) into a written agreement substantially on that third party's standard terms of business and in either case which Prosperon confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Prosperon, Prosperon shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.
- 10.6 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to these Terms and Conditions).
- 10.7 Processing, personal data and data subjects
- (a) Processing by the Supplier
 - (i) Scope: to provide the Managed Application and MSP Services

- (ii) Nature: access to Customer Networks including Customer personal information in accordance with the Services Description.
- (iii) Purpose of processing: to install the Managed Application in the Customer Networks and provide the MSP Services
- (iv) Duration of the processing: the Term
- (b) Types of personal data: Name, email address
- (c) Categories of data subject: Customer employees, directors, agents, sub-contractors, end user customer
- (d) Third Party Processors: N-able Solutions ULC, N-able Technologies Limited.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time during these Terms and Conditions, and for a period of five years after termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.1.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms and Conditions.

12. Limitation of liability

- 12.1 Except as expressly and specifically provided in these Terms and Conditions:
- 12.1.1 the Customer assumes sole responsibility for results obtained from the use of the MSP Services, and for conclusions drawn from such use. Prosperon shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Prosperon by the Customer in connection with the MSP Services, or any actions taken by Prosperon at the Customer's direction;
 - 12.1.2 Prosperon shall not be in breach of the Agreement if Prosperon's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees; and

- 12.1.3 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.2 Prosperon will have no liability to the Customer arising out of or in connection with the Agreement for any loss of profits, account of profits, loss of business, loss of revenue, loss or reputation or goodwill, loss of opportunity, loss of data or interference with business (unless and solely to the extent that Prosperon provides backup and restore services as part of the MSP Services), or any indirect or consequential loss of any kind.
- 12.3 In particular and without prejudice to the provisions of clause 12.2, Prosperon will not be liable for any loss or damage arising to the Customer's Networks or any Intellectual Property Rights if such loss is in any way attributable to any of the following:
 - 12.3.1 any failure of the Customer's applications, databases or operating systems, including loss or corruption of data or (unless and to the extent that backup and restore services are part of the Managed Services) failure to implement back-up procedures;
 - 12.3.2 any breach of the Agreement if in the reasonable opinion of Prosperon (based on its knowledge of the industry) the Managed Application had been tampered with by the Customer or any third party authorised by the Customer with or without Prosperon's knowledge;
 - 12.3.3 any failure of any Customer-managed IT partner to provide its services in accordance with the relevant agreements;
 - 12.3.4 any Internet failure outside the control of Prosperon; or
 - 12.3.5 any latent defect in any third party equipment or the SolarWinds Platform, or failure of such equipment or the SolarWinds Platform to perform in accordance with the manufacturer's specification.
- 12.4 Prosperon has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1 million per claim. The limits and exclusions in this clause reflect the insurance cover Prosperon has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 12.5 References in this clause 12 to liability include every kind of liability arising under or in connection with the Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.6 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 12.7 Nothing in these Terms and Conditions limits any liability which cannot legally be limited, including liability for:
 - 12.7.1 death or personal injury caused by negligence;
 - 12.7.2 fraud or fraudulent misrepresentation; and
 - 12.7.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 12.8 Subject to clauses 12.1 to 12.7 each party's liability under an indemnity in these Terms and Conditions total liability in the aggregate shall not exceed £1,000,000.
- 12.9 Subject to clause 12.1 to 12.7 Prosperon's total liability to the Customer shall not exceed £500,000 per claim.
- 12.10 Unless the Customer notifies Prosperon that it intends to make a claim in respect of an event within the notice period, Prosperon shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
13. Suspension and Termination
- 13.1 Prosperon may suspend all or any part of the MSP Service without liability to the Customer if:
- 13.1.1 Prosperon reasonably believes that the MSP Services have, are or will be used in breach of the Agreement;
 - 13.1.2 Prosperon discover that the Customer is affiliated in any manner with a person who has used similar services abusively in the past;
 - 13.1.3 the Customer does not co-operate with Prosperon's investigation of any suspected breach of the Agreement;
 - 13.1.4 Prosperon reasonably believes that the Customer has permitted the MSP Services to be accessed or manipulated by a third party without its consent;
 - 13.1.5 Prosperon reasonably believes that Customer Networks have been hacked or compromised, except where such hack or compromise is reasonably attributable to Prosperon's failure to perform its obligations under the Agreement;
 - 13.1.6 Prosperon reasonably believes that suspension of the MSP Services is necessary to protect Prosperon's technical environment or Prosperon's other customers;
 - 13.1.7 any Charges or other amount due under the Customer Contract is overdue or is at risk of non-payment in the opinion of Prosperon;
 - 13.1.8 the Customer repeatedly violates the Fair Use Policy; or
 - 13.1.9 Prosperon is required to do so by law or a regulatory or government body.
- 13.2 Prosperon will give the Customer advance notice of a suspension under this clause of at least twelve (12) Business Hours unless Prosperon determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Prosperon or its other customers from imminent and significant operational, legal, or security risk, or non-payment of its Charges. If Prosperon suspends the MPS Services pursuant to any of clauses 13.1.1, 13.1.3 or 13.1.7, then Prosperon may continue to charge the Customer the Charges for the MSP Services during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the MPS Services. If Prosperon suspends the MPS Services pursuant to clause 13.1.5, then the Customer must address the underlying vulnerability prior to Prosperon placing the MPS Services back in service.

If the Customer requests, Prosperon may be able to perform this work for the Customer as a supplementary service on a time and materials basis at Prosperon's standard hourly rates.

13.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

13.3.1 the other party commits a material breach of any term of the Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

13.3.2 the other party repeatedly breaches any of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Agreement;

13.3.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

13.3.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

13.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership);

13.3.6 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);

13.3.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.3.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

13.3.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

13.3.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3.3 to clause 13.3.9 (inclusive); or

13.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 13.4 Without affecting any other right or remedy available to it, Prosperon may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- 13.4.1 the Customer fails to pay any amount due under the Customer Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
 - 13.4.2 there is a change of Control of the Customer.
14. Consequences of termination
- 14.1 On termination or expiry of the Agreement:
- 14.1.1 the licenses granted in clause 8 shall terminate with immediate effect;
 - 14.1.2 the Customer shall immediately pay to Prosperon all of Prosperon's outstanding unpaid invoices and interest and, in respect of the MSP Services supplied but for which no invoice has been submitted, Prosperon may submit an invoice, which shall be payable immediately on receipt; and
- 14.2 Any provision of these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 14.3 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
15. Force majeure
- 15.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- 15.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 15.1.2 epidemic or pandemic;
 - 15.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 15.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 15.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - 15.1.6 collapse of buildings, fire, explosion or accident;
 - 15.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - 15.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

- 15.1.9 interruption or failure of utility service.
- 15.2 Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Terms and Conditions by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of these Terms and Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.4 The Affected Party shall:
- 15.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 15.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than six weeks, the party not affected by the Force Majeure Event may terminate the Agreement by giving one weeks' written notice to the Affected Party.
16. Assignment and other dealings
- 16.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.
- 16.2 Prosperon may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Agreement, provided that Prosperon gives prior written notice of such dealing to the Customer.
17. Variation
- No variation of these Terms and Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
18. Waiver
- 18.1 A waiver of any right or remedy under these Terms and Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 18.2 A failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms and Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 18.3 A party that waives a right or remedy provided under these Terms and Conditions or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

19. Rights and remedies

The rights and remedies provided under these Terms and Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

- 20.1 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms and Conditions.

- 20.2 If any provision or part-provision of these Terms and Conditions is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

- 21.1 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.

- 21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms and Conditions.

22. Conflict

If there is an inconsistency between any of the provisions of these Terms and Conditions and the provisions of the Customer Contract or the Services Description, the order of precedence shall be, the Customer Contract, the Services Description then these Terms and Conditions.

23. No partnership or agency

- 23.1 Nothing in these Terms and Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. Third party rights

- 24.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions.

- 24.2 The rights of the parties to rescind or vary the Customer Contract are not subject to the consent of any other person.
25. Notices
- 25.1 Any notice given to a party under or in connection with the Customer Contract shall be in writing and shall be:
- 25.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office or its principal place of business (in any other case); or
- 25.1.2 sent by email to the business email addresses of the principal contact of each party.
- 25.2 Any notice shall be deemed to have been received:
- 25.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 25.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- 25.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 25.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 25.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
26. Multi-tiered dispute resolution procedure
- 26.1 If a dispute arises out of or in connection with the Customer Contract or the performance, validity or enforceability of these Terms and Conditions (a “**Dispute**”) then the parties shall follow the procedure set out in this clause:
- 26.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the manager of the Customer and manager of Prosperon shall attempt in good faith to resolve the Dispute;
- 26.1.2 if the manager of the Customer and manager of Prosperon are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Customer and CEO of Prosperon who shall attempt in good faith to resolve it; and
- 26.1.3 if the CEO of the Customer and CEO of Prosperon are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute,

requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 60 days after the date of the ADR notice.

- 26.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 28 which clause shall apply at all times.

27. Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

28. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Customer Contract or its subject matter or formation.