

## UPFUND.IO – CONSIGNMENT AGREEMENT

LAST MODIFIED ON OCTOBER 24, 2016

**IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY BEFORE CREATING OR BACKING A CAMPAIGN..**

This Consignment Agreement (the “Agreement”) is made by and between iProsper Inc. (“UpFund,” “we,” or “us”), a California corporation with a principal place of business at 5800 3rd St., San Francisco, CA 94124, you, the Seller (as defined below), and the “Backer” or “Campaign Backer” (collectively, the “Parties”). Upon the commencement of a Campaign (as defined below) on the Service (as defined below), the following terms and conditions shall be effective and binding on the Parties:

### 1. DEFINITIONS

“Amazon” means the Amazon online retail store, located at [www.amazon.com](http://www.amazon.com), and the “Fulfillment by Amazon” service.

“Backer” means the user of the Service who pays a portion of the Principal in order to fund the manufacture and sale of the Goods.

“Campaign” means a funding campaign created by Seller and hosted on the Service. Backer may contribute money through the Campaign to manufacture or purchase Goods on consignment, to be sold by Seller. The Campaign page on the Service contains information about Seller, the Goods, the needed Principal, the promised Profits, the Funding Goal, the Payback Deadline, and other relevant information about the Campaign.

“Funding Goal” means the amount of Backer pledges required in order for the Campaign to move past the funding stage. If the Funding Goal is met, UpFund will proceed with manufacturing the Goods. If the Campaign fails to meet the Funding Goal by the date shown on the Campaign page, the Campaign will not continue, and Campaign Backers’ funds will be returned to them.

“Goods” means the products that are being manufactured or purchased using the Principal and sold by Seller on Amazon.

“Payback Deadline” means the deadline in number of days, relative to the date that the product is delivered and is ready for sale, on which the Principal and Profit are due to be paid to all Backers. All relevant dates are shown on the website

“Principal” means the amount of money paid by all Campaign Backers, for use in the manufacturing of the Goods by UpFund on behalf of Seller, as well as any freight, duties, taxes, and other costs involved with the manufacturing, transportation, and sale of the Goods.

“Profits” means the amount of money promised to Backers by Seller from the sale of the Goods. The Profits are represented in the Campaign by a percentage of the Principal and may be labeled “ROI to Investor.” Sellers may choose an ROI between 8% and 15%.

“Revenue” means the price at which the Goods are sold, minus any fees deducted by Amazon. This number is represented by the dollar amount transferred to Seller’s bank account by Amazon.

“Seller” means the user of the Service who creates the Campaign and sells the Goods on consignment on Amazon.

“Service” means the UpFund.io website, located at [www.upfund.io](http://www.upfund.io), and all other affiliated subdomains, websites, and services.

“Unit” means a portion of the Principal equal to the cost of one Good, including, but not limited to, manufacturing, shipping, and other costs necessary to bring that Good to market.

## 2. RIGHTS GRANTED

2.1. Backer’s Grant of Rights. Backer hereby grants Seller the right of sale of the Goods and authorizes Seller to sell the Goods by public online retail sale on Amazon, in accordance with the terms of this Agreement.

Backer hereby appoints UpFund as their exclusive agent in all dealings with Seller arising under this Agreement, including, but not limited to, the exclusive right to:

- 2.1.1. Hold title to the Goods on Backer’s behalf;
- 2.1.2. Aggregate all individual Backer pledges into a single Principal amount;
- 2.1.3. Liquidate and resell the Goods in cooperation with Seller;
- 2.1.4. Bring legal action against or resolve disputes with Seller;
- 2.1.5. Insure the Goods on Backer and Seller’s behalf at a fair market rate, if appropriate;
- 2.1.6. Communicate directly with Seller on Backer’s behalf; and
- 2.1.7. Collect all payments for Goods and redistribute them to all Campaign Backers on a pro rata basis.

Backer hereby acknowledges and agrees that certain decisions involving the Goods, the Principal and the Profits may be made by a vote of all Campaign Backers, which may not be an action that Backer has voted for or has abstained from voting on, and Backer agrees to be bound by those decisions.

Backer hereby grants UpFund the right to make adjustments to Backer’s account balance, in order to accurately reflect available funds, payments of Principal and Profits, fund withdrawals, claims against funds, and refunds. Backer agrees that, under certain circumstances, these activities may result in a negative account balance.

2.2. Seller’s Grant of Rights. Seller hereby appoints UpFund as their exclusive agent to receive and hold Principal funds from Backers, and to contract with and compensate the manufacturer of the Goods and other necessary parties. Seller hereby grants UpFund all right and title to the Goods until the time that the Principal and Profits for the Campaign are paid to UpFund on behalf of the Campaign Backers. Once the Principal and Profits are paid to the Campaign Backers, title to any outstanding inventory of Goods will be transferred to Seller.

## 3. PAYMENT

The proceeds from any sale of the Goods by Seller will be deposited into a bank account controlled by UpFund. Funds will be removed from this bank account on a regular basis by UpFund and reflected in the Service accounts of all Campaign Backers on a pro rata basis, until the full Principal and the Profit are reflected in the Service accounts of all Campaign Backers. These funds may then be withdrawn by Backers and are subject to any withdrawal or other fees imposed by UpFund (as defined below).

#### 4. DURATION

The Payback Deadline for each Campaign is listed on the Campaign page on the Service. Seller agrees to set the Payback Deadline to a date reflecting a conservative estimate of the amount of time required to manufacture and sell the Goods, based on prior sales and market experience.

Backer acknowledges and agrees that the performance of each Campaign will vary depending on market conditions and the performance of Seller's business, which is difficult to estimate prior to the commencement of a Campaign. Backer agrees to keep this in mind when acting upon a Seller Default (as defined below).

#### 5. BACKER TERMS

5.1. Backer Requirements. In order to back a Campaign, Backer must:

5.1.1. Be at least 18 years of age;

5.1.2. Have a valid account on the Service in good standing; and

5.1.3. Have a valid bank account with which to transfer funds related to the Campaign.

5.2. Limitations. Backer must invest a minimum of \$250, or a number of Units equivalent to \$250, in order to take part in a Campaign. For the first 24 hours of a Campaign, Backer may only invest up to a maximum of 10% of the total Funding Goal. After the first 24 hours, there is no maximum amount of investment in a Campaign.

5.3. Agreement to Purchase Units. By pledging to purchase Units or contribute to the Principal, Backer agrees to make such funds available in their connected bank account upon the successful funding of the Campaign.

5.4. Fees. When Backer withdraws funds from the Service, UpFund will charge a fee equal to the lesser of (i) 2% of the withdrawal amount or (ii) \$10.

#### 6. SELLER DEFAULT

6.1. Reasons for Seller Default. In the event that any of the following occur (a "Seller Default"), the provisions of Section 6.2 of this Agreement will go into effect:

6.1.1. The Term ends with unsold Goods and the Principal and Profits still outstanding;

6.1.2. An expected Campaign update or receipt of Revenue does not occur within 4 weeks of the estimated date detailed in the Campaign; or

6.1.3. A Revenue payment promised by Seller or detailed in the Campaign is less than 50% of its expected amount.

6.2. Effect of Seller Default. In the event of a Seller Default, Backer has three options:

6.2.1. Post a comment on the Campaign, visible by Seller, UpFund, and all Backers, to voice any thoughts, concerns, or suggestions about the Campaign. This option is always available during the duration of the Campaign;

6.2.2. Send a notification to UpFund through the Service. UpFund will then contact Seller and attempt to get an update on the Campaign and the sale of the Goods. This information will then be shared with all Campaign Backers;

6.2.3. Enter a vote of "No Confidence" in Seller's ability to sell enough of the Goods to repay the Principal and the Profit.

6.3. No Confidence. If a majority of Campaign Backers enter a vote of "No Confidence," the Campaign will be cancelled. Seller will then have the choice to either (i) return only the outstanding Principal to UpFund, (ii) return the outstanding Principal and Profits to UpFund, or

(iii) work with UpFund to liquidate the remaining inventory of Goods. UpFund will attempt to provide reasonable assistance, but Seller retains the sole responsibility for liquidation of the Goods and the return of the Principal and Profits to Backers. Seller's actions under this Section will be reflected in Seller's public profile during future Campaigns by Seller.

Failure of Seller to deliver or liquidate all remaining inventory within 30 days of the date of cancellation will result in the accrual of interest on outstanding Principal and Profits, at a rate of 5% per annum, and the institution of dispute resolution remedies by UpFund on behalf of the Campaign Backers.

Until a majority of Campaign Backers enter a vote of "No Confidence," Seller may continue to sell the Goods as set forth in this Agreement.

## 7. SELLER TERMS

7.1. Seller Requirements. In order to create a Campaign and make it available to potential Backers on the Service, Seller must:

7.1.1. Be at least 18 years of age;

7.1.2. Have a valid account in good standing on the Service;

7.1.3. Have a valid bank account with which to transfer funds related to the Campaign to and from the Service; and

7.1.4. Have the Campaign approved by UpFund (as described below).

7.2. Approval Required. Prior to a Campaign being made public, UpFund must approve Seller's proposed Campaign. This approval may be based on a number of factors, some of which include their established track record of selling products on Amazon, number of positive reviews of past products sold on Amazon, and number of past product sales on Amazon. This approval is solely at UpFund's discretion and may be revoked at any time.

7.3. Compliance with Laws. Seller warrants and represents that the Goods are in compliance with all State, Federal, and other applicable regulations in any jurisdiction in which the Goods are sold.

7.4. Fees. Seller agrees to pay to UpFund an origination fee prior to the start of the Campaign. The current fee schedule is determined by the amount raised as follows: \$299 at a minimum, and up to 4% of the amount raised. This fee may change from time to time at UpFund's discretion, please check the Seller's FAQ section for the exact fee schedule. This fee will be included in the final amount raised for the campaign, and may be made through Seller's account on the Service using a connected bank account as part of the repayment for funds raised.

Additionally, UpFund will deduct a percentage of the Profits due to the Backer as a fee equal to 5% of the Profits.

7.5. Campaign Principal Limitations. Seller's first Campaign is limited to a Principal amount of \$100,000. This initial Principal limitation may be changed or waived from time to time at UpFund's discretion. Following a successful first Campaign (meaning that all Principal and Profits are paid to Backers as promised), future Campaigns will not have a limit on the Principal amount sought. All Campaigns must have a minimum Principal amount of \$1,000.

7.6. Purchase of Goods from Manufacturer. Seller agrees that UpFund will receive the Principal funds and compensate the manufacturer of the Goods. Seller and UpFund agree to work together in good faith in order to effect the manufacture of the Goods in a timely manner. Once

manufactured, the Goods will be transported directly to the appropriate Amazon fulfillment centers, unless another destination is agreed upon in writing by UpFund and Seller.

7.7. Theft or Loss. Seller agrees that it will compensate Campaign Backers for any Goods that are lost, stolen, or damaged while in Seller's possession, only to the lesser of (i) the value appropriated by Seller's insurance coverage or (ii) the combined value of the Principal and the Profit.

## 8. NO EQUITY

The Parties acknowledge and agree that this Agreement and the relationship between the Parties does not involve any type of equity agreement or exchange of equity in any of the Parties. The Parties acknowledge and agree that this Agreement is solely an agreement for the consignment of the Goods.

## 9. INSPECTION OF GOODS

If for any reason, Seller believes that any Goods may be fraudulent or questionable in authenticity, Seller reserves the right to refuse service and/or have the Goods inspected by local law enforcement agencies without further authorization from Backer.

## 10. FULFILLMENT TERMS

All sales of the Goods are subject to the terms of Amazon's Fulfillment by Amazon (FBA) terms. To the extent that they are applicable to each of the Parties individually, these terms are incorporated by reference into this Agreement. The Amazon FBA terms may be found here: <http://www.amazon.com/gp/help/customer/display.html?nodeId=1161302>

## 11. SALES INFORMATION AND UPDATES

UpFund will use the Amazon API to collect sales data directly from Amazon, and will make commercially reasonable efforts to make this data available to Campaign Backers on the Service, throughout the Campaign.

Seller agrees to provide regular updates to Campaign Backers through the Service throughout the process of manufacturing and selling the Goods, including milestones, relevant business operations, and explanations of any setbacks.

## 12. EXPENSES

During the term of this Agreement, all costs and expenses incurred with respect to the consignment of the Goods including, but not limited to, any public charges whether in the nature of sales, occupational or other taxes or assessments or license fees, which may be levied against the Goods, or against Seller or Backer by reason of the Goods, and all expenses incidental to storage and handling of the Goods, shall be paid for by UpFund on Seller's behalf using the Principal.

In the event that the Principal is not sufficient to pay such expenses, Seller agrees to pay these expenses in advance of any sales of the Goods. These funds will be taken from Seller's

remaining portion of the Revenue, and not interfere with the Campaign Backers' right to the Principal and Profit.

### 13. INTELLECTUAL PROPERTY

Backer and UpFund agree that Seller is the sole owner of all photographic images, as well as all copyrights, trademarks, patents and trade secrets that may be associated with the Goods.

### 14. MISCELLANEOUS TERMS

14.1. Indemnity. Backer and Seller agree to indemnify UpFund and hold them harmless against any liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claims, action or proceeding based upon or in any way related to any breach or alleged breach of the terms of this Agreement. Additionally, Seller agrees to indemnify UpFund and Backer and hold them harmless against any liabilities, losses, damages, costs, or expenses, including attorneys' fees, from all claims for injury or product liability based on the use of the Goods and sold by Seller.

14.2. Warranty. UpFund makes no warranties or representations to Backer, Seller, or any other person with respect to the Goods or the Service. UPFUND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Because some states or jurisdictions do not allow the disclaimer of implied warranties, the foregoing disclaimer may not apply to Backer or Seller.

14.3. Limitation of Liability. IN NO EVENT SHALL UPFUND BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTIES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for certain types of damages, in such states or jurisdictions the liability of UpFund is limited to the fullest extent permitted by law.

14.4. Survival of this Agreement. The parties hereby agree that this Agreement shall be binding on their heirs, personal representatives, successors, and assigns.

14.5. Independent Contractors. Each of the Parties is an independent contractor and has no authority to bind the other, to incur any liability or otherwise act on behalf of the other, except as provided in this Agreement. Each Party shall be solely responsible for all laws and regulations governing its employees, agents and representatives.

14.6. Review. The parties agree that they have had the opportunity to review this Agreement and have had an opportunity to be advised as to its contents, obligations and liabilities, and have signed this Agreement fully understanding their respective rights, responsibilities, and obligations under the Agreement.

14.7. Choice of Law. The parties agree that any dispute concerning the enforcement of this Agreement shall be brought in San Francisco, California, and that the jurisdiction shall be in the