



## **Master Services Agreement**

**MSA-20221201-3**

**THIS MASTER SERVICES AGREEMENT (MSA) number MSA-20221201-3, (“The Agreement”)**  
supersedes and renders obsolete all previous MSA contract agreements;

**BETWEEN:**

1. The organisation named in the contract that refers to this MSA, (the “Client”); and
2. spriteCloud B.V. and its daughter company CPro incorporated in The Netherlands with registration number 27351758 and registered offices at Rijnlandlaan 199, Unit 1.05 1062 MX, Amsterdam, (the “Supplier”).

The above named shall collectively be known as “Parties”, and each a “Party”.

**WHEREAS:**

- (A) The Supplier is experienced in software quality assurance and testing in the domain of web services, online services, and web based applications.
- (B) The Parties wish to enter into an arrangement with each other, for the provision of Services by the Supplier to the Client, on the terms and conditions of this Agreement.

**IT IS HEREBY AGREED** as follows:

## 1. Definitions and Interpretation

- 1.1 In this Agreement (including the Recitals and the Schedules), except to the extent that the context otherwise requires, the following terms shall have the meanings set forth below:

“Business Day” means a day (other than a Saturday or Sunday) on which banks are generally open in The Netherlands for the transaction of normal banking business;

“Confidential Information” means the trade secrets, confidential or sensitive information or knowledge and know-how including the confidential financial, trade, customer, product, transaction, system and processing information and data of the relevant Party;

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, whether through the ownership of voting securities, by contract, or otherwise and derivative terms thereof (including “Controlling”, “Controlled by” and “under common Control with”) shall also bear such meaning as aforesaid. For the purpose of this definition, the holding of an interest of more than fifty (50) percent of the equity share capital of the relevant corporation shall be deemed to be “Control” of the corporation;

“Deliverables” means the specific deliverables pursuant to the Services, as set out in a Statement of Work signed by the Parties;

“Event of Force Majeure” means Acts of God, explosions, war or threat of war, terrorism or threat of terrorism, actions of the armed forces or government agencies pursuant to war, terrorism or threats thereof, fire, flood, adverse weather conditions, labour disputes, strikes, lockouts or other industrial actions irrespective of where such events occur, shortage of materials or services, detention or holding of goods by any customs authorities or any national or international airworthiness authority, riots or civil commotion, sabotage, earthquakes and natural disasters, acts, omissions, restrictions, regulations, prohibitions or measures of any governmental, parliamentary or local authority;

“Fees” means the amounts payable by the Client to the Supplier pursuant to the Services, as set out in the relevant Statement of Work signed by the Parties;

“Group” in respect of any undertaking, means that undertaking, any holding company of such undertaking from time to time and any subsidiary of any of the foregoing from time to time and “member of its Group” shall be construed accordingly;

“Intellectual Property Rights” means patents, trademarks, service marks, rights in logos, rights in get-up, trade names, internet domain names, rights in designs, software, copyright (including rights in computer software) and moral rights, database rights, utility models, processes, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration;

“Milestone” means, in respect of a Deliverable or Service, a date for delivery as set out in the relevant Statement of Work;

“Project Commencement Date” shall mean the date upon which a project shall commence, as set out in the relevant Statement of Work;

“Statement of Work” means a document which sets out specific (i) Services and Deliverables; (ii) Milestones (if any); and (iii) the applicable Fees, as agreed from time to time between the Parties;

“Quote” means a written statement detailing the expected cost(s) and expected time to the Client for the specific Services or Deliverables as set out therein. This will be presented in the form of a Statement of Work by the Supplier for Client’s consideration and, subject to eventual negotiation, acceptance;

“Services” means the services to be supplied by the Supplier to the Client pursuant to this Agreement and each Statement of Work signed by the Parties;

“Specification” means the written technical description for the Deliverables as set out in the Statement of Work; and

“Supplier Rights” means all Intellectual Property Rights accrued, vested in or controlled by the Supplier as at the Project Commencement Date, including for the avoidance of doubt the

Intellectual Property Rights in any material licensed to the Supplier by a third party.

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) references to Recitals and Schedules are to be construed as references to the recitals and schedules to this Agreement and references to this Agreement include its Schedules;
  - (b) words importing the singular include the plural and vice versa, words importing a gender include every gender;
  - (c) references to a person shall be construed as including references to an individual, firm, issuer, corporation, unincorporated body of persons or any state or any agency thereof;
  - (d) any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted; and
  - (e) headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 1.3 Any Statements of Work which are expressed to be entered into pursuant to this Agreement and which are signed by the Parties shall be part of the Agreement.
- 1.4 In the event of a conflict between any terms and conditions in this Agreement and any terms and conditions contained in a SOW, the terms and conditions in SOW shall take precedence over this Agreement.

## 2. Term

- 2.1 Unless in writing specified and agreed otherwise, this Agreement shall take effect on the signing date of the contract referred to this MSA. This agreement shall continue to be in force until explicitly replaced or terminated by written agreement by either Party with a 30 days notice period, or terminated in accordance with the provisions of clause 10.

## 3. Services

- 3.1 The Supplier agrees to provide professional software testing services to the Client in exchange for Fees and in accordance with the terms and conditions of this Agreement.
- 3.2 The Services, Deliverables, Milestones (if any) and Fees shall be determined as follows:
- (a) If the Client desires specific services, it will notify the Supplier in writing, setting out:

- (i) a brief description of the desired services;
  - (ii) the applicable time-frame for delivery of the services and any deliverables; and
  - (iii) an initial draft of the likely Specification including where appropriate an indication of the desired budget.
- (b) Within 7 Business Days of receipt of the notice from the Client pursuant to clause 3.2, the Supplier shall send a Quote to the Client, which sets out the proposed fees as well as any other relevant information in respect of the requested services and deliverables.
- (c) The Client and the Supplier will negotiate the Quote in good faith and will jointly draft then both sign a corresponding Statement of Work.
- 3.3 Upon signature of the Statement of Work by both Parties, it shall be incorporated into the Agreement and the Parties shall be bound by its terms.

## 4. Intellectual Property

- 4.1 Unless expressly set out in the Agreement or any Statement of Work, neither Party shall have any claim or interest in the other Party's Intellectual Property Rights.
- 4.2 As between the Supplier and the Client, the Client shall upon full payment of fees, subject to any Supplier Rights, be the sole owner of all Intellectual Property Rights in the Deliverables from the date of creation of the Deliverables. The Supplier shall use its best endeavours to ensure that Deliverables do not incorporate any Supplier Rights and it shall notify the Client in writing of any Supplier Rights in the Deliverables at the earliest reasonable opportunity.
- 4.3 Subject to the provisions of clause 4.2, the Supplier hereby assigns to the Client absolutely with full title guarantee all its right, title and interest in and to the Deliverables ("Assigned Rights"), including:
- (a) the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Patents, Registered Designs and Trademarks; and
  - (b) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned Rights whether occurring before, on, or after the date of this assignment.
- 4.4 To the extent that a Deliverable incorporates Supplier Rights, the Supplier hereby grants to the Client the non-exclusive, royalty-free and perpetual right to use the relevant Supplier Rights in the Deliverables in any medium and for any commercial purpose without any

additional payment to be made to the Supplier unless otherwise stated in the Statement of Work.

- 4.5 The Supplier hereby indemnifies and holds harmless the Client against all actions, claims, losses, costs, damages and expenses (including without limitation, all reasonable and actually incurred legal fees, costs or expenses and any compensation, costs or disbursements paid by the Client to compromise or settle any action or claim) suffered or incurred by the Client and arising by reason of or in connection with a claim by a third party that the use of the Deliverables by the Client or by the Client's customers is a breach of that third party's Intellectual Property Rights.

## 5. Acceptance of Deliverables

- 5.1 Upon completion of services and creation of deliverable as specified in a Statement of Work, the Supplier will request that the Client sign an Acknowledgement of Delivery for said services. The Client shall not unreasonably decline this request
- 5.2 The Client has the right to test the Deliverables against the relevant Specifications.
- 5.3 If the Client, acting reasonably, considers that a Deliverable does not meet the Specification, it must notify the Supplier in writing within 30 Business Days of receipt of the Deliverable from the Supplier, setting out its reasons in detail (a "Defect Notice"), which shall be by email or by letter addressed to the Supplier's QA Director, or Digital Services Lead. If the Supplier does not receive a Defect Notice within the period set out above, the relevant Deliverable will be deemed to have been accepted by the Client.
- 5.4 Upon receipt of a Defect Notice, the Supplier within 7 Business Days shall use all reasonable endeavours to alter the Deliverable, provided that such alteration is to bring the Deliverable in-line with the Specification unless otherwise mutually agreed between the Parties.
- 5.5 If, upon re-submission of a Deliverable in accordance with clause 5.4, the Client submits another Defect Notice in accordance with clause 5.3, the Client shall have the right, at its sole discretion to either:
  - (a) deal with the matter in accordance with the provisions of clause 13.9; or
  - (b) terminate the specified Statement of Work.

## 6. Fees, Expenses and Payment

- 6.1 The Supplier shall submit an invoice (quoting the purchase order number as provided by the Client, if applicable) to the Client upon acceptance of the Deliverables in accordance with the provisions of clause 5 or completion of a Service in accordance with the provisions of the relevant Statement of Work (including the meeting of any specified Milestone, where

applicable).

- 6.2 The payment terms in respect of invoices submitted in accordance with this clause 6 shall be net 30 days from the date of the relevant invoice and the amounts payable shall be exclusive of VAT but inclusive of all other taxes, imposts and fees. If VAT is payable it shall be separately identified on the invoice and shall be payable by the relevant Party subject to receipt of a valid VAT invoice from the other Party.
- 6.3 The Client shall, within 5 Business Days of receipt, inform the Supplier in writing if the Client, acting reasonably, has a query in respect of an invoice and wishes to withhold payment of it, or a part of it. In the absence of such notice the invoice shall be deemed to have been accepted.
- 6.4 Any query submitted pursuant to clause 6.3 shall be discussed between the Parties' representatives for a period of 5 Business Days after the invoice due date. If the query is resolved within such period, the amount in question shall be paid immediately and if it is not resolved in such period, it shall be dealt with in accordance with the provisions of clause 13.9.
- 6.5 Unless expressly set out in the Quote, Fees are exclusive of expenses, which shall be agreed by the Parties prior to the Supplier incurring them.
- 6.6 Any invoice not paid within 60 days will be subject to statutory interest at the discretion of the Supplier.

## 7. Confidentiality

- 7.1 Each Party will treat as confidential all Confidential Information obtained from the other under this Agreement. The Parties agree that they will not without the prior written consent of the other disclose Confidential Information to any person or use the same except for the purposes of complying with their respective obligations pursuant to this Agreement.
- 7.2 Clause 7.1 does not prohibit disclosure of Confidential Information to:
  - (a) the receiving Party's own personnel (including employees, agents and permitted contractors) who need to know the Confidential Information provided that such personnel are first made aware of the confidential nature of the Confidential Information and the receiving Party's obligations in relation to it and themselves agree in writing to treat the Confidential Information confidentially; or
  - (b) the receiving Party's auditors, professional advisers, any person or organisation having a statutory or regulatory right to request and receive that information, including without limitation a relevant tax authority.
- 7.3 Clause 7.1 does not apply to information which the receiving Party can show by reference to documentary or other evidence:

- (a) was rightfully in its possession before the start of discussions between the Parties relating to this Agreement; or
- (b) is already public knowledge or becomes so at a future date (save for as a result of breach of clause 7.1); or
- (c) is received from a third party who is not under an obligation of confidentiality in relation to the information; or
- (d) is developed independently without access to, or use of or knowledge of, the Confidential Information.

7.4 The obligations of confidentiality under this clause 7 shall survive the termination of this Agreement until such time as the Confidential Information enters the public domain other than through the fault of the recipient Party.

## 8. Representations and Warranties

8.1 Each of the Parties hereby represents, warrants and undertakes to each other that:

- (a) it has the power, has taken all necessary action to allow it, and has all governmental and regulatory authorisations, licenses, approvals and registrations necessary for it to enter into and perform this Agreement and to permit the payments contemplated by this Agreement;
- (b) neither the entry into or performance by it of, nor any payment contemplated by, this Agreement does or will conflict with any court order or agreement to which it is a party or with its constitutional documents; and
- (c) In fulfilling its obligations pursuant to this Agreement, it will use a degree of skill and care and diligence reasonably to be expected of a competent business in its industry.

8.2 The Supplier hereby represents, warrants and undertakes that:

- (a) it shall provide the Services and the Deliverables with reasonable care and skill and in accordance with best industry practice; and
- (b) the use by the Client or the Client's customers of the Deliverables shall not breach a third party's Intellectual Property Rights or other proprietary rights.

## 9. Liability

9.1 Nothing in this Agreement shall exclude or limit a Party's liability for:

- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by its negligence;
  - (c) any other liability which it is not permitted to exclude or limit.
- 9.2 Subject to clause 9.1, each Party's liability in respect of breach of contract or breach of duty, tort or fault or negligence or otherwise whatsoever and/or howsoever arising out of or in connection with this Agreement or any Statement of Work shall be limited to €100,000 (one hundred thousand Euro).
- 9.3 Neither Party shall be liable to the other Party or be deemed to be in breach of its obligations under any provision in this Agreement, to the extent that such breach is a result of:
- (a) any delay or failure by the other Party in performing its obligations under this Agreement; or
  - (b) following the other Party's reasonable instructions.
- 9.4 Notwithstanding any other provision in this Agreement, in no event shall either Party be liable to the other Party for:
- (a) any lost revenue, lost profits, business, opportunity or anticipated savings, loss of goodwill or injury to reputation, loss of data and/or loss of use of any data, replacement goods, loss of technology rights or services; or
  - (b) incidental, punitive, indirect or consequential damages arising from or related to the performance of its obligations under this Agreement, even if advised of the possibility of such damages, whether under contract, tort (including negligence), strict liability or otherwise.

## 10. Termination and Termination Consequences

- 10.1 Without limiting any other remedy available to it, either Party (the "Terminating Party") may terminate this Agreement or any Statement of Work with immediate effect by giving written notice to the other Party (the "Non-terminating Party") at any time:
- (a) if the Non-terminating Party is in material or persistent breach of any of the provisions of this Agreement or any Statement of Work, which, if remediable, is not remedied within 5 Business Days or such alternative period as may be agreed between the Parties, following the receipt of such written notice; or
  - (b) if the Non-terminating Party is unable to pay its debts or an order is made or a resolution passed for its liquidation, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction) or an administrative or

other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over it or all or any substantial part of its assets or takes formal steps towards making any kind of composition, compromise or arrangement involving it and any of its creditors, or anything analogous to the foregoing shall occur in any jurisdiction;

- (c) pursuant to clause 11.3 (b).

## 11. Force Majeure

11.1 Neither Party shall be liable for any delay in performing its obligations under this Agreement to the extent that such is directly caused by an Event of Force Majeure provided that:

- (a) any delay by a subcontractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and
- (b) strikes or industrial action on behalf of the delayed Party's employees or its appointed sub-contractors will not relieve that Party from liability for delay.

11.2 Subject to the delayed Party:

- (a) immediately telling the other Party in writing of the reasons for the delay and the likely duration of the delay; and
- (b) using reasonable endeavours to perform its obligations under this Agreement,

the performance of the delayed Party's obligations will be suspended during the period that such circumstances described in clause 11.1 persist and that Party will be granted an extension of time for performance equal to the period of the delay.

11.3 Save where the delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):

- (a) any costs arising from that delay will be borne by the Party incurring the same; and
- (b) either Party may, if that delay continues for more than six weeks, terminate this Agreement immediately on giving written notice to the other.

## 12. Assignment and Subcontracting

12.1 This Agreement may not be assigned by either Party without the other Party's prior written consent.

12.2 Without prejudice to the provisions of clause 12.1:

- (a) the Supplier may at any time sub-contract the provision of the Services, including without limitation to any company within the Supplier's Group. The Supplier shall be liable to the Client for the acts and omissions of all sub-contractors appointed by the Supplier in relation to the Services; and
- (b) each Party may at any time assign this Agreement and any Statement of Work to any other company within its Group, subject to prior notification to the other Party.

## 13. Miscellaneous

13.1 Any notice required to be given pursuant to this Agreement shall be in writing and sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post, by fax confirmed by first class post, or by email which has been received, as evidenced by receipt by the sender of a read receipt, to the relevant Party, and any such notice shall be deemed to have been received by the addressee at the time of delivery or in the case of prepaid first class post, two days after posting.

13.2 Any amendment or variation to this Agreement shall be made only by express written agreement between the Parties.

13.3 The failure of either Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.

13.4 Without prejudice to the rights of either Party in respect of actions relating to fraudulent misrepresentation, this Agreement and any documents referred to herein constitute the entire understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the Parties relating thereto.

13.5 The Parties agree that monetary damages may not be a sufficient remedy for the damage which may accrue to a Party by reason of failure by any other Party to perform certain of its obligations hereunder. Any Party shall therefore be entitled to seek injunctive relief, including specific performance, to enforce such obligations.

13.6 The unenforceability of any single provision of this Agreement shall not affect any other provision hereof. Where such a provision is held to be unenforceable, the Parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.

13.7 A person who is not a party to this Agreement has no right to rely upon or enforce any term

of this Agreement.

- 13.8 Nothing in this Agreement or any Statement of Work shall be deemed to constitute a partnership between the Parties nor, save as expressly set out herein, constitute either Party the agent of the other Party.
- 13.9 This Agreement shall be governed by and construed in accordance with Netherlands law and each Party irrevocably submits to the exclusive jurisdiction of The Netherlands courts over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability.
- 13.10 The Client hereby declares to neither directly nor indirectly recruit personnel from the Supplier for the duration of the contract, extended by 1 year. In the event of a breach of this prohibition, the Client will pay damages of € 25,000, subject to the compensation that is due for non-compliance with the contract. Should the Client provide the services and staff of the Supplier to a third party, the Client will incorporate this clause into the contract with the third-party. This clause needs to be included in every contract in the chain, from the Supplier to final customers, independent of how many agents are in-between.

## 14. Contact points

- 14.1 The spriteCloud Operations Director is the assigned contact role for this document:  
 Name : Operations Director  
 Email : [projects@spritecloud.com](mailto:projects@spritecloud.com)  
 Phone : +31 20 615 9155
- 14.2 The Operations Director is responsible for ensuring all project activities and schedule milestones are properly resourced and executed to our documented quality standards. This person can be contacted during Dutch work-day office hours for any questions or discussions related to project work or project contracts.

## 15. Dates

- 15.1. The Services to be supplied pursuant to this Agreement shall commence on the date specified in any relevant Statement of Work, and terminate on the date specified in that Statement of Work; or terminated in accordance with the provisions of clause 10 of The Agreement.

## 16. Resource planning and timekeeping

- 16.1. The resource planning and timekeeping for the Services shall be as follows:

- (a) Changes to agreed test resource allocations and test iteration schedules can be made by The Client in writing to The Supplier's Operations Director. Written requests must be made at least 72 hours in advance of the proposed allocation or schedule change.
- (b) In the event The Client provides less than 72 hours notice for resource allocation or test iteration schedule changes, they may be subject to a penalty charge of one day's fees for the affected resources, at the discretion of The Supplier.
- (c) At the end of each calendar month The Supplier will provide The Client with a company timesheet that details the time worked for each resource allocated to The Client project, and an invoice for the time and materials used to provide services. The invoice is to be paid subject to Section 6 of The Agreement.
- (d) Any work required to be done by the Supplier outside office hours (Mon - Fri between 8:00 - 18:00) will be charged at 150% of the resource fees at the discretion of the Supplier.

## 17. Security and Penetration testing legal waiver

17.1. By agreeing to this MSA The Client :

- (e) Permits The Supplier to perform tests on the systems in scope that may, without such permission, amount to actions punishable under Article 138 of the Dutch Criminal Code (Wetboek van Strafrecht) regarding 'computervredereuk';
- (f) Acknowledges that The Supplier will perform tests that, although every precaution is taken to limit the strain on The Client's systems, have the potential to interrupt services in scope;
- (g) Acknowledges that The Supplier will try to perform all the tests in scope within the time frame specified by The Client, but no guarantees can be made to complete everything should time not permit;
- (h) Agrees not to hold The Supplier liable for any losses or damages that may result from its testing, and indemnifies The Supplier and their partners from any third party claims related to its performance of tests, insofar as The Supplier and their partners are acting in accordance with this proposal or other explicit (written) agreements with The Supplier;
- (i) Confirms that it is the owner of all computer systems in the scope of the tests, or that it has the permission of the owner to allow for these tests to take place.

## 18. Sign-off

The signing of any document which refers to this Master Services Agreement (version MSA-20221201-3) will constitute an written agreement to this Master Services Agreement and therefore making the agreement subject to the terms and conditions laid out in this Master Services Agreement.

Any addendums created and agreed to by the Parties will modify sections of this Master Services Agreement and supersede the mentioned sections of the MSA as described in the addendums.



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