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**CONTROL AGREEMENT**

between

**msg systems ag**

and

**msg life ag**

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This control agreement (the '**agreement**') is concluded between

**msg systems ag**, registered at Robert-Bürkle-Strasse 1, 85737 Ismaning, entered in the commercial register at Munich District Court under HRB 140149

– hereinafter referred to as the '**controlling enterprise**' –

and

**msg life ag**, registered at Humboldtstrasse 35, 70771 Leinfelden-Echterdingen, entered in the commercial register at Stuttgart District Court under HRB 731887

– hereinafter referred to as the '**controlled enterprise**', and jointly with the controlling enterprise as the '**parties**' and in each case a '**party**'.

### **Preamble**

- (A) The share capital of the controlled enterprise is EUR 42,802,453.00 and is divided into 42,802,453 no-par-value bearer shares. The controlling enterprise holds over 75% of the voting shares in the controlled enterprise. The remaining shares in the controlled enterprise are held by external shareholders.
- (B) The parties are interested in strengthening their connections and in integrating the controlled enterprise in the controlling enterprise's group of companies to the benefit of all those involved.

On this basis, the parties agree as follows:

### **§ 1 Management**

- (1) The controlled enterprise places the management of its company under the controlling enterprise. The controlling enterprise is accordingly entitled to issue general instructions as well as instructions relating to isolated incidents to the management board of the controlled enterprise. An instruction to uphold, change or terminate this agreement may not be issued.
- (2) The controlling enterprise will only exercise its right to give instructions through its management board. Instructions must be made in text form. In urgent cases, instructions may also be issued verbally; they are to be confirmed immediately in text form by the controlling enterprise.

- (3) The management board of the controlled enterprise is obliged to follow the instructions from the controlling enterprise.

## **§ 2 Right to information**

- (1) The controlling enterprise is entitled at any time to look at the books and records of the controlled enterprise. The management board of the controlled enterprise is obliged to give the controlling enterprise all the requested information about all matters concerning the controlled enterprise at any time.
- (2) Irrespective of the rights agreed above, the controlled enterprise is obliged to constantly report to the controlled enterprise about its business development, in particular about key transactions.

## **§ 3 Loss transfer**

- (1) The controlling enterprise is obliged pursuant to Section 302 (1) of the German Stock Corporation Act (AktG) in its latest version to compensate any annual net loss otherwise incurred at the controlled enterprise, as long as this is not compensated by amounts being taken from the other revenue reserves that have been added to it during the period of the agreement. Section 302 (2) and (3) of the AktG apply in the latest version.
- (2) The controlled enterprise's compensation claim is due on each reporting date and interest is to be paid on it from this point in time according to Sections 352 and 353 of the HGB. The controlling enterprise is entitled, but not obliged, to pay a partial payment amounting to the anticipated annual net loss by the financial year end and to immediately compensate any additional claims based on the annual financial statements prepared and audited according to § 4; the controlled enterprise must repay any excess payments immediately once the corresponding annual financial statements have been prepared and audited.
- (3) The entitlement to loss transfer expires pursuant to Section 302 (4) of the AktG after ten years from the day on which the entry of the termination of this agreement in the commercial register has been announced according to Section 10 of the HGB.
- (4) Otherwise the principles of Section 302 of the AktG apply.

## **§ 4 Annual financial statements**

- (1) For the compensation of loss according to § 3, the annual financial statements of the controlled enterprise to be prepared taking into account the mandatory legal and statutory provisions as well as bearing in mind the arrangements in this agreements and audited by an audit firm are decisive.
- (2) When preparing the annual financial statements, the controlled enterprise is to observe the accounting guidelines and accounting instructions issued by the controlling

enterprise within the framework of what is legally permitted; this also applies to the annual financial statements decisive for the last compensation of loss prepared after the end of the agreement, as well as to any new preparation or correction of earlier annual financial statements concerning the term of this agreement.

- (3) The annual financial statements of the controlled enterprise are to be prepared and adopted before the annual financial statements of the controlling enterprise.
- (4) If the financial year of the controlled enterprise ends at the same time as the financial year of the controlling enterprise, any transferred loss incurred by the controlled enterprise is to be taken into account in the annual financial statements of the controlling enterprise nonetheless.

## § 5 Compensation, guaranteed dividend

- (1) The controlling enterprise guarantees the external shareholders of the controlled enterprise – as reasonable compensation according to Section 304 (1), sentence 2, of the AktG, for the duration of this agreement, regardless of the result of the controlled enterprise, for each full financial year and for each share of the controlled enterprise – an annual dividend of EUR 0.04 gross (**‘guaranteed dividend’**) less corporate income tax and solidarity surcharge according to the tax rates applicable to the controlled enterprise’s financial year in question (**‘net guaranteed dividend’**). Taking into account the tax rates applicable at the time this agreement was concluded, this results in a net guaranteed dividend of EUR 0.03 per share in the controlled enterprise for a full financial year of the controlled enterprise. To clarify, it is agreed that the net guaranteed dividend, if prescribed by law, is to include any withholding tax that may be incurred (such as capital gains tax plus solidarity surcharge).
- (2) If dividends decided by the controlled enterprise are below the guaranteed dividend amount, the external shareholders are entitled to a dividend supplement from the controlling enterprise, that is, a claim to payment of the difference between the dividend decided by the controlled enterprise and the amount of the guaranteed dividend (**‘compensation payment’**). If the controlled enterprise decides on a higher dividend than the guaranteed dividend, the claim to the compensation payment lapses in this case.
- (3) The compensation payment is due in each case on the first banking day after the annual general meeting of the controlled enterprise for the past financial year.

- (4) The compensation payment to the external shareholders is paid out by the controlled enterprise on behalf of and on account of the controlling enterprise as the party liable for the compensation payment. The controlling enterprise is to provide the controlled enterprise with the necessary funds for this.
- (5) The compensation is paid for the first time for the financial year during which this agreement comes into effect. If this agreement ends during a financial year of the controlled enterprise, or the controlled enterprise forms a short financial year during the period of the agreement, the compensation is reduced pro rata temporis.
- (6) If the controlled enterprise's share capital increases from company funds due to the issue of new shares, the compensation per share is reduced to such an extent that the overall compensation amount remains unchanged.
- (7) If the share capital of the controlled enterprise is increased due to contributions in cash or in kind while granting a subscription right to the external shareholders, the rights from this § 5 also apply to the shares subscribed to by external shareholders from the capital increase.
- (8) If proceedings are initiated in accordance with Section 1, number 1, of the German Act on Appraisal Proceedings (SpruchG) and the court legally sets a higher compensation than agreed in this agreement, the external shareholders, even if they have been compensated in the meantime, can demand a corresponding supplement to the compensation payment obtained by them. Equally, all other external shareholders are put on equal footing if the controlling enterprise undertakes to pay a higher compensation to a shareholder of the controlled enterprise in a settlement to avoid or end proceedings in accordance with Section 1 (1) of the SpruchG.
- (9) The reasonable compensation guaranteed to the external shareholders pursuant to § 5(1) was determined on the basis of the future earnings prospects of the controlled enterprise at the time of the resolution at the controlled enterprise's annual general meeting.

## **§ 6 Settlement**

- (1) At the request of an external shareholder of the controlled enterprise, the controlling enterprise undertakes to acquire their shares against a settlement. The settlement is granted according to statutory provisions purely as a cash settlement that amounts to EUR 2.44 per share.
- (2) The obligation of the controlling enterprise to acquire the shares has a time limit. The time limit ends two months after publication of the settlement offer by the controlling enterprise, at the earliest, however, two months after the day on which the entry of the existence of this agreement in the commercial register has been announced according to Section 10 of the HGB. An extension of the time limit according to Section 305 (4), sentence 3, of the AktG remains unaffected. To comply with the time limit, timely receipt of the declaration of acceptance at the controlling enterprise is sufficient.
- (3) If proceedings are initiated in accordance with Section 1, number 1, of the SpruchG and the court legally sets a higher settlement, the shareholders who have already received a

settlement can also demand a corresponding supplement to the settlement granted. Equally, all other external shareholders of the controlled enterprise are put on equal footing if the controlling enterprise undertakes to pay a higher settlement to a shareholder of the controlled enterprise in a settlement to avoid or end proceedings in accordance with Section 1, number 1, of the SpruchG.

- (4) If, during appraisal proceedings, the controlled enterprise's share capital increases from company funds due to the issue of shares, the settlement per share is reduced to such an extent that the overall settlement amount remains unchanged. If, during appraisal proceedings, the controlled enterprise's share capital increases due to contributions in cash or in kind, the rights from this § 6 also apply to the shares subscribed to by external shareholders from the capital increase.
- (5) The normal bank charges incurred when transferring the shares of the controlled enterprise are to be reimbursed by the controlling enterprise. Selling the shares is therefore free of charge for the external shareholders.
- (6) If this agreement ends due to termination by the controlling enterprise or the controlled enterprise at a time when the time limit determined in § 6(2) of this agreement to accept the settlement according to § 6 (1) of this agreement has already expired, every external shareholder of the controlled enterprise at this time is entitled to sell the shares in the controlled enterprise held by them at the time this agreement is terminated against the settlement per share determined in § 6 (1) of this agreement to the controlling enterprise, and the controlling enterprise is obliged to acquire the shares of every external shareholder at their request. If the settlement per share in the controlled enterprise determined in § 6 (1) of this agreement is increased due to a legal decision in appraisal proceedings or due to a court settlement to avoid or end appraisal proceedings, the controlling enterprise acquires the shares of the external shareholders under the conditions specified in sentence 1 against payment of the settlement per share in the controlled enterprise set in the appraisal proceedings or in the court settlement. If, up to the relevant point in time pursuant to § 6(6), the controlled enterprise's share capital increases from company funds due to the issue of shares, the settlement per share is reduced to such an extent that the overall settlement amount remains unchanged. The right of sale according to this § 6 (6) has a time limit. The time limit ends two months after the day on which the entry of the termination of this agreement in the commercial register has been announced according to Section 10 of the HGB. § 6 (3) and § 6 (5) of this agreement apply accordingly.

## **§ 7 Effectiveness**

- (1) This agreement requires the approval of the annual general meetings of the controlled enterprise and the controlling enterprise.
- (2) This agreement is concluded with effect as of 1 January 2021. In order to be effective, it needs to be entered in the commercial register at the registered office of the controlled enterprise.

## **§ 8 Term of the agreement, termination**

- (1) This agreement is concluded for an indefinite period. It can be terminated by each party to the agreement at any time by complying with a notice period of six months. The notice of termination must be made in writing.
- (2) The right to terminate the agreement for cause without complying with a notice period remains unaffected. Termination for cause is applicable in particular:
  - (a) If the controlling enterprise, as a result of disposal or contribution or for another reason, no longer holds the majority of voting rights at the annual general meeting of the controlled company; or
  - (b) One of the parties is converted, merged, demerged or liquidated.
- (3) If the agreement ends in the course of a financial year, then the controlling enterprise is only obliged to compensate the pro rata loss incurred by the controlled enterprise up to the time of termination. Instructions pursuant to § 1 of this agreement which were issued before the termination but have not yet been implemented are no longer to be followed.
- (4) If the agreement ends, then the controlling enterprise must provide security to the creditors of the controlled enterprise in accordance with Section 303 of the AktG.

## **§ 9 Final provisions**

- (1) Changes and additions to this agreement must be made in writing to become effective. This applies in particular to this written form clause as well. Otherwise Section 295 of the AktG applies.
- (2) If a provision of this agreement is or becomes ineffective or unenforceable or if the agreement contains a loophole, the validity of the remaining provisions of the agreement are not be affected by this. In place of the ineffective or unenforceable provision, the parties are to make an appropriate regulation which, if legally possible, comes closest to what the parties intended or would have intended according to the spirit and purpose of the agreement.
- (3) The place of performance for the obligations on both sides and the sole place of jurisdiction is the registered office of the controlled enterprise.

Leinfelden-Echterdingen, [Date]

For **msg life ag**

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Rolf Zielke

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Dr Aristid Neuburger

Ismaning, [Date]

For **msg systems ag**

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Dr Stephan Frohnhoff

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Dr Jürgen Zehetmaier