

## Test License Agreement MARZIPAN

Hereinafter referred to as the 'Agreement'

Between

**msg for banking ag**

Amelia-Mary-Earhart-Straße 14

60549 Frankfurt a. M.

Hereinafter referred to as the 'Licensor'

and

[Insert Customer Name]

[Insert Customer Address]

[Insert Postal Code, City]

[Insert Country]

Hereinafter referred to as the 'Interested Party'

Licensor and Interested Party are each also referred to as a 'Party' and collectively as the 'Parties'

This Test License Agreement is concluded with regard to the temporary provision of the software MARZIPAN.

### 1 Subject Matter of the Agreement

- 1.1 The Licensor provides the Interested Party, in accordance with the following provisions of this Agreement, with the software specified below for use via the Internet and grants usage rights for the duration and purposes of this Agreement: [please specify the software clearly, including the version number,...] (hereinafter referred to as 'Software')
- 1.2 The purpose of this Agreement is to give the Interested Party the opportunity to test the Software and thus evaluate a possible licensing. Use of the Software for testing purposes is limited to the following activities by the Interested Party:  
[please add the test activities required for the customer.]  
[...perform test calculations]
- 1.3 The Interested Party is prohibited from testing the Software by using personal data. The Interested Party undertakes to use only dummy data for use of the Software for the testing purposes described in section 1.2.

- 1.4 In addition to the provision of the Software for use via the Internet, the Licensor will provide the Interested Party with the user documentation for the Software in German language in an electronic, printable form. Software and user documentation are hereinafter collectively referred to as the 'Licensed Items'.
- 1.5 Licensor is permitted to engage subcontractors. The use of subcontractors does not release the Licensor from its sole obligation to the Interested Party to fulfil the contract.

## 2 Delivery

The expected delivery date of the access data to use the Software and the user documentation is [approximately three weeks after signing this Agreement]. The Licensor will provide [bitte beschreiben, wie die Zugangsdaten und die Benutzerdokumentation bereitgestellt werden.]

- Notification of the URL to access the Software
- Transmission of the UserID
- Transmission of the password in a separate email / by phone
- Transmission of the documentation for the Software

## 3 Non-remuneration

The temporary granting of rights of use and provision of the Licensed Items shall be free of charge.

## 4 Rights to the Licensed Items

The Parties agree that the Licensed Items are the property of the Licensor, who is the owner of all rights thereto.

By the temporary provision of the Licensed Items in accordance with this Agreement, the Interested Party only acquires the rights specified in Section 5 for the duration and purposes of this Agreement.

Property rights or further usage rights beyond those specified in Section 5 are not granted to the Interested Party.

## 5 Rights of use

- 5.1 The Licensor grants the Interested Party for the duration of this Agreement a simple, non-transferable, non-sublicensable, right to use the Licensed Items for the testing purposes specified in Section 1.2 within its own business. The Interested Party is not permitted to provide the Licensed Items to third parties, even for use on behalf of the Interested Party. Productive use of the Licensed Items by the Interested Party is excluded.
- 5.2 The Interested Party is not permitted to use the Licensed Items in any other way than specified in section 5.1, except with separate written permission of the Licensor.  
  
In particular, the Interested Party is not allowed to reproduce, modify, distribute, and/or make the Licensed Items publicly available.

- 5.3 In the event of any breach of this Agreement, the Licensor is entitled to immediately terminate this Agreement for good cause.
- 5.4 The Parties expressly agree that upon termination of the provision, for whatever reason, all rights to the Licensed Items shall end immediately.

## **6 Obligations of the Interested Party**

- 6.1 The Interested Party will protect the Licensed Items and the access data to use the Software from access by unauthorized employees (see Section 7.3) and third parties by means of appropriate security measures. The Interested Party shall notify the Licensor immediately if there is any suspicion that the access data may have become known to unauthorized employees and/or third parties.
- 6.2 Before and during testing the Software—insofar as the Interested Party transmits/imports test data for testing the Software - the Interested Party shall back up this data regularly and in accordance with its importance and create its own backup copies to enable reconstruction in the event of loss of the data and information. Data backup is the sole responsibility of the Interested Party.
- 6.3 The Interested Party is obliged to check its data and information for viruses or other harmful components before entering an to take state-of-the-art protective measures for this purpose.

## **7 Confidentiality / Non-Disclosure**

- 7.1 The term 'Confidential Information' includes the Software provided by the Licensor to the Interested Party, its content and functionality, the access data to the Software including the corresponding user documentation, and all other documents and information relating to the Software or otherwise made available, as well as the existence and content of this Agreement.
- 7.2 The Interested Party shall treat the Confidential Information provided or otherwise made available strictly confidential and shall use it solely for testing purposes and to evaluate possible licensing. The Interested Party is not entitled to use the Confidential Information, in whole or in part, for other purposes, to make the Confidential Information available to third parties, or to develop, manufacture, produce, and/or distribute software products derived from Confidential Information, or to use it in any other form without having concluded a contractual agreement in this regard. Reverse engineering within the meaning of § 3 para. 1 no. 2 of the German Trade Secrets Act (GeschGehG) is expressly prohibited. The Interested Party undertakes not to make or store any electronic, mechanical, or other copies, recordings, or other reproductions of the Confidential Information.
- 7.3 The Interested Party undertakes to make the Confidential Information relating to the Software available only to those employees who are directly involved in evaluating the possible use of the Software by the Interested Party and who need to be provided with the information. The Interested Party shall oblige its employees, insofar as they become aware of Confidential Information, to maintain confidentiality to the extent stipulated in this Agreement and shall be liable to the Licensor for any violations by its employees as if they were its own violations.
- 7.4 The obligation to maintain confidentiality shall commence upon signature of this Agreement by both Parties. If the Licensor has already provided Confidential Information to the Interested Party prior to the conclusion of this Agreement, the obligation to maintain confidentiality shall apply from the time Confidential Information was first provided. The

obligation to maintain confidentiality shall continue for indefinite period of time even after termination of this Agreement.

7.5 [OPTIONAL: If the Interested Party violates the confidentiality provisions set forth in this section 7, it shall pay the Licensor a contractual penalty of EUR 10,000.00 for each case of violation, excluding the continuation of offence. Further claims for damages shall remain unaffected. The contractual penalty shall be offset against the damages in this case.]

## 8 Data Protection

- 8.1 The Parties will maintain data confidentiality and comply with data protection requirements in accordance with GDPR (General Data Protection Regulation). During the performance of the Agreement the Parties shall only use the services of such agents or subcontractors who have been committed to data confidentiality and compliance with data protection requirements in accordance with GDPR.
- 8.2 Insofar as the Licensor processes personal data of the Interested Party on its behalf within the scope of providing its services under this Agreement, the Parties shall conclude the Data Processing Agreement attached to this Agreement as Annex 1.

## 9 Return

- 9.1 Upon completion of the test period, but no later than the end of this Agreement, the Interested Party shall immediately cease using the Licensed Items and delete all copies, other records, and reproductions of Confidential Information in its possession as well as the access data for use of the Software. The Licensor will block the Interested Party's access to the Software at the end of this Agreement. **The Interested Party shall immediately return the user documentation to the Licensor.** The Interested Party shall ensure that access to the user documentation, access data for use of the Software, and Confidential Information is no longer possible. Upon request by the Licensor, the Interested Party shall provide written confirmation of this.
- 9.2 Upon request by the Licensor, the Interested Party shall also grant the Licensor access to its business premises and/or IT systems during normal business hours after the end of the test period or contract in order to verify that the user documentation, access data for use of the Software, and Confidential Information have been completely deleted and that no copies, other records, or reproductions of the Licensed Items remain in the possession of the Interested Party. This right of the Licensor shall continue to exist for a period of three (3) years after termination of this Agreement.

## 10 Limitation of Liability

- 10.1 The Licensor is liable under the statutory provisions without limitation for damages due injury to life, body, or health, for non-compliance with a guarantee, and for damages resulting from intentional or grossly negligent breach of duty by the Licensor.
- 10.2 Licensors' liability in all cases of contractual and non-contractual liability is limited to the contract-typical foreseeable damages, which are based on a minor negligent breach of essential obligations by Licensor. Essential obligations within the meaning of this provision

are obligations which enable the proper fulfilment of the Agreement in the first place and the observance whereon the Interested Party may rely.

- 10.3 In all other cases, the Licensor's liability for minor negligence is limited to an amount of 100,000 euros under this Agreement.
- 10.4 Subject to the provisions of the Product Liability Act, any strict liability of the Licensor is excluded.

Characteristics of the Licensed Items, technical data, specifications, and performance data in connection with this Agreement and other contract-related documents or descriptions are for illustrative purposes only. They are not to be understood as a guarantee or a warranted characteristic.

- 10.5 The Licensor is not liable for the loss of data of the Interested Party; Section 6.2 applies.
- 10.6 The Licensed Items are provided under exclusion of any liability for material defects and legal defects of title.

## **11 Term of the Agreement / Termination**

- 11.1 This Agreement shall enter into force upon signature and shall be limited to a term of 30 days from the availability of the Software. It may also be terminated by either Party during the aforementioned contract period with one week's notice.
- 11.2 The right to extraordinary termination for good cause remains unaffected by the above provisions.
- 11.3 Any termination must be in writing.

## **12 Final Provisions**

- 12.1 This Agreement is governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods.
- 12.2 This Agreement itself as well as any amendments and supplements must be in writing to be valid. This also applies to changes to this written form requirement.
- 12.3 Place of performance and fulfillment is the registered office of the Licensor.
- 12.4 The place of jurisdiction for all disputes arising from or in connection with this Agreement is Frankfurt am Main.
- 12.5 Should individual or several provisions of this Agreement be or become invalid or void, the validity of the remaining provisions shall not be affected. The Parties undertake to replace the invalid or void provision with a valid and appropriate provision that comes as close as possible to the economic purpose pursued by the invalid or void provision. The same applies to any regulatory gaps.

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[Place of Signature], [Date]

[First Name] [Last Name]

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[Place of Signature], [Date]

[First Name] [Last Name]

[Official Company Name]

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[Place of Signature], [Date]

[First Name] [Last Name]

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[Place of Signature], [Date]

[First Name] [Last Name]

[Official Company Name]