EX-10.36 38 d635330dex1036.htm EX-10.36	an equity investment by the BILL & N	rMENT AGREEMENT relating to MELINDA GATES FOUNDATION into BIONTECH ed: 30 August 2019	Exhibit 10.36 SE	
by ar 1. 2.	BioNTech SE, An der Goldgrube 12, 55131 Mainz (the <i>Compan</i> and Bill & Melinda Gates Foundation, a Washington charitable tru Washington and having its principal place of business at 500 Fif <i>Investor</i>)	st that is a tax-exempt private foundation organized havenue North, Seattle, Washington 98109, United - the Company together with	ted States (the <i>Foundation</i> or the Foundation being referred to as	
1. 2. 3. 4.	TAI COMMITMENT TO SUBSCRIBE FOR FOUNDATION CONTRIBUTION TO CAPITAL RESERVES OBLIGATIONS OF COMPANY GUARANTEES AND RELATED PROVISIONS	BLE OF CONTENTS	te Parties and each of them a Party -	
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Sche Sche Sche Exhi	dule 1 Corporate action in relation to Withdrawal Right dule 2 Amended SHA dule 3 Business Guarantees dule 4 Withdrawal Right bit Business Guarantees (6)	CHEDULES AND EXHIBITS		
WHE	EREAS The Company is a European company under German law (Socunder HRB 48720 and having its registered business address at The Company's business is the research, development and mar treatment) of cancer and other diseases which it conducts itself Company and the group formed by the Company and such sub	An der Goldgrube 12, 55131 Mainz, Germany. ufacture of pharmaceuticals for individualized important via its subsidiaries (each of the Company and each	munotherapies (diagnosis and each such subsidiary a <i>Group</i>	
(C)	the Company collectively <i>BioNTech</i>). The Foundation is a characteristic, diagnostics, and prophylactics to reduce the burder live healthy, productive lives. At present, the registered share capital (<i>Grundkapital</i>) of the Company shares with an imputed nominal value (<i>Stathare</i>), but is expected to, print to EUR 218,748,168 by way of conversion of reserves (<i>Kapitamapidal</i>), to be provided by the company's supervisory be (the <i>Articles</i>). The existing Shares have been entered into a share	ompany (the <i>Share Capital</i>) amounts to EUR 12,1 <i>ickaktien</i>) of EUR 1.00 each (each existing or future or to the Closing Date (as such term is defined believerhöhung aus Gesellschaftsmitteln) (the <i>Stock-Spern</i>); any transfer of the existing Shares requires the pard as laid down in more detail in section 5 of the	te of its mission to help all people 152,676 and is divided into are share in the Company low), increase by EUR 206,595,492 plit). The existing Shares are fully the Company's approval the Company's articles of association	
(D) (E)	existing Shareholders as listed in the share register dated 16 Au who had a specific need for that have been issued share certific capital (<i>Genehmigtes Kapital</i>) of EUR 109,374,084. The Shareholders are parties to a shareholders agreement origin from 27 August 2019 (the <i>Shareholders' Agreement</i>). On or about the date hereof, BioNTech and the Foundation havinvestment into the Company in consideration of the Company <i>Agreement</i> , with such investment pursuant to the Letter Agree Based on the valuation of the Company on which the Parties has	ates. Following the Stock-Split, the Company is expanding the entered into on 29 December 2017 and most be entered into an agreement pursuant to which the incurring the Global Access Commitments as definent being referred to as the <i>Investment</i>).	recently amended with effect as Foundation is to make an equity fined in that agreement (the <i>Letter</i>	
(G)	the <i>Capital Increase</i>). The Company will use its authorized capand <i>Exhibits</i>) (collectively the <i>Investment Agreement</i>), is to see the prerequisites to be satisfied for the Investment to occur, increase.	es and the process by which the Foundation Share Ferred to as 4 22 Dital to issue the Foundation Shares. The Clauses), all annexes, (the Annexes) and all so the out the commitments of the Parties immediately	chedules and exhibits (the <i>Schedules</i> in relation to the Investment and	
NOW 1. 1.1	same will take the form of the Amended SHA (as such term is Foundation in its capacity as a Shareholder. V THEREFORE in consideration of the above, the Parties agree as Commitment to subscribe for Foundation Shares Subject to the Conditions having been satisfied and the Subscribeen satisfied and the Subscription Form received being the Clausiness Days (a Business Day means any day (other than a de Closing Date, subscribe (übernehmen) for the Foundation Shar to Clause 1.2(f)) (via email in advance) and transfer to the Conditions of the Conditions of the Conditions of the Conditions of the Foundation Shares Clause 1.2(f)) (via email in advance) and transfer to the Conditions of the Cond	ption Form received by the Foundation (the day or osing Date), the Foundation shall promptly and in ay which is a Saturday, Sunday or legal or bank ho es by way of executing and delivering the original	on which the Conditions so have no event later than within seven oliday in Mainz, Germany) after the l of the Subscription Form pursuant	
1.2	the Foundation Shares (this product, subject to Clause 1.4, beir by bank remittance in Euro net of costs to the following no-debact Account holder IBAN SWIFT Reference Conditions shall mean the following conditions:		ncrease Account):	
	 (a) The Letter Agreement has been entered into and all contents. (b) The prerequisites for the management board of the Conshares are met. (c) The corporate action specified in Schedule 1 (Corporate). (d) The Stock-Split has taken effect. (e) The Shareholders' Agreement has been amended such to apply for them in the draft for an amended shareholders. 	ompany to be permitted to admit the Foundation to vate action in relation to Withdrawal Right) has taken that the Foundation Shares upon their issuance can	subscription of the Foundation ken effect. arry the financial preferences set out	
1.3	 (f) After the satisfaction of the Conditions set out in para Conditions have been satisfied, the Company has sub the Foundation Shares (i) which meets the prerequisit Stock Corporation Act (<i>Aktiengesetz</i>, <i>AktG</i>) (the draft <i>Subscription Form</i>). The subscription form to be submitted pursuant to Clause 1.2(for a name the Foundation as the subscriber, 	mitted to the Foundation a draft subscription form es of Clause 1.3, (ii) and conforms to the requirem subscription form actually submitted and meeting	(<i>Zeichnungsschein</i>) in relation to nents of section 185 of the German	
	 (b) specify as the number of Shares to be subscribed the specify as the issuance price per Share to be subscribed the European Central Bank for United States Dollars the last Business Day immediately preceding the date amount in EUR so specified being the <i>EUR Issuance</i> (d) specify as the date on which the subscription become Form is submitted, and (e) otherwise be in accordance with the German Public Contents 	ed an amount in EUR equal to the USD Issuance P expressed as the number of United States Dollars on which the Subscription Form is submitted (or a <i>Price</i> , s invalid a date no later than two months after the or	exchangeable for each one Euro for a lower amount in EUR), with the	
1.4	In the event that as of the time the Foundation is about to pay the Unadjusted Aggregate EUR Issuance Price) the Unadjusted Aconversion rate applied by the bank from which the Foundation is more than USD 55 million, the Foundation may elect to subspurposes hereof henceforth being the Foundation Shares and the Issuance Price converted into United States Dollars on the basic USD 55 million. This Investment Agreement shall terminate in the event that the waived. Further the Foundation may terminate this Investment set out in Clauses 1.2(a) (to the extent the Company is responsi	aggregate EUR Issuance Price converted into United procures the Euro for the payment pursuant to Claribe for that lower number of Shares (with such read a Aggregate EUR Issuance Price reducing according to the Actual Conversion Rate comes as close as a Letter Agreement has been terminated before the Agreement by written notice to the Company in the	ted States Dollars on the basis of the lause 1.1 (Actual Conversion Rate) new number of Shares for all ingly) that the Aggregate EUR is possible to but does not exceed a Conditions have been satisfied or the event that any of the Conditions	
2. 2.1 2.2	Contribution to capital reserves The Foundation and the Company agree that the Aggregate EU number of Foundation Shares (such excess the <i>Additional Pays</i> 2 no. 4 of the German Commercial Code (<i>Handelsgesetzbuch</i> , For the avoidance of doubt, the parties acknowledge that in the	 ment) shall be booked into the free capital reserves HGB) (the Free Capital Reserves Accounting Tree event the Free Capital Reserves Accounting Treat 	s pursuant to section 272 paragraph eatment). tment will be formally challenged	
3. 3.1	by a court, the Company's auditors or any other governmental reasonable best efforts to maintain the Free Capital Reserves A Company on the advice of legal counsel or its auditors determined the Company shall book the Additional Payment as an amount of the German Commercial Code (<i>Handelsgesetzbuch</i> , <i>HGB</i>) of Obligations of Company Promptly upon receipt of the Subscription Form duly executed shall without undue delay (<i>unverzüglich</i>), and in any event with implementation (<i>Durchführung</i>) of the Capital Increase with the Increase, the <i>Registration</i>) and shall take all measures and make	or regulatory body, the Company shall promptly not counting Treatment; provided that if despite using the sit is not permissible to maintain the Free Capit attained in respect of the issuance of shares pursually such other capital reserve as applies in the opinion and the EUR Issuance Price times the number of Inin five (5) Business Days from such receipt, apply the commercial register (such registration of the improved the such registration of the improved the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration of the improved that is a such receipt to the such registration to the such receipt to the such registration to the suc	ant to section 272 paragraph 2 no. 1 on of the relevant party. Foundation Shares, the Company y for the registration of the Capital	
3.2 4. 4.1	The Company shall not in any way transfer the monies receive Guarantees and Related Provisions Title Guarantees The Company hereby represents and warrants to the Foundation Garantieversprechen) (section 311 paragraph 1 of the German Date: (a) The Company has been duly incorporated under German Company has been d	d from the above account or utilize them until Reg n regardless of fault or negligence by way of an in Civil Code (Bürgerliches Gesetzbuch)) that as of the nan law and is validly existing as a Societas Europ	gistration has occurred. Independent guarantee (selbständiges) the date hereof and as of the Closing Independent guarantee (SE).	
,	 (b) The Shares held by each Shareholder are validly issued or concealed) of contributions to a Shareholder (Rück have been made. There exist no obligations to make for the foundation Shares will be free of encumbrances case subject to the Shareholders' Agreement. (d) The Company has unrestricted economic and legal authorized by all necessary corporates. 	gewähr von Einlagen). No hidden contributions in urther contributions (keine Nachschusspflichten). 7 22 and any rights of third parties and are not subject thority and capacity to enter into this Investment Aprate and/or legal action and is in compliance with	to any disposal restrictions, in each Agreement and to issue new shares,	
4.2	any other agreements between the Company and its state. (e) Upon the Shares having been validly subscribed for behaving occurred, the Foundation will hold full legal at (f) This Investment Agreement and the Shareholders' Aglegal, valid and binding obligations enforceable under (the <i>Title Guarantees</i>). Business Guarantees The Company hereby guarantees to the Foundation regardless	y the Foundation, the Foundation having made its nd economic title to the Foundation Shares. Treement have been duly executed by or on behalf applicable law against the Company in accordance of fault or negligence by way of an independent gu	of the Company and constitute their ce with its terms. uarantee (selbständiges	
4.3	Garantieversprechen) (section 311 paragraph 1 of the German (Business Guarantees) are true, accurate and complete as of the the Title Guarantees collectively referred to as the Guarantees to the Company's Knowledge or Best Knowledge shall be deen Poetting and Özlem Türeci has actual knowledge or do not actuprudent businessman (Sorgfalt eines ordentlichen Geschäftsmasstatements shall not be considered violated on grounds that the Company or its Group Companies. None of the Guarantees given in this Clause 4 shall be considered defined in section 434 paragraph 1 of the German Civil Code of the Garantees as defined in section 443 paragraph 1 and section 444 paragraph 1 and section 444 paragraph 1 and section 445 paragraph 1 and section 445 paragraph 1 and section 446 paragraph 1 and section 446 paragraph 1 and section 446 paragraph 1 and section 447 paragraph 1 and section 447 paragraph 1 and section 448 paragraph 1	e date of this Agreement (the <i>Business Guarantee</i>). For these purposes, each of those such statement ned accurate unless where and to the extent any of nally know due to negligence (<i>fahrlässige Unkenntunes</i>) that the relevant statement is not accurate. For Company has not conducted an investigation regarded as an agreement on the legal and factual nature r as a guarantee for certain features of goods sold	es, with the Business Guarantees and ts that are qualified as being given f Ugur Sahin, Sean Marett, Sierk etnis) on the basis of the care of a For the avoidance of doubt, such arding freedom to operate for the e (Beschaffenheitsvereinbarung) as	
4.4	In the event a Guarantee turns out not to be true, accurate or confoundation in such position as it would be in had the Guarante possible or the Company failed to do so within four (4) weeks Foundation by way of a compensation capital increase for the limited to, in any event the Foundations' <i>pro rata</i> portion (reflective to be incurred to remedy the breach by, the Company as a constant of	mplete in any respect (the <i>Breach of Guarantee</i>) to been true, accurate and complete in any respect (after a respective request by the Foundation, the Coundations' damage from the relevant Breach of Coundations' fully diluted shareholding it 8 22	(Naturalrestitution). If this is not company shall compensate the Guarantee, including, but not in	
	the issuance of additional Shares to the Foundation (the <i>Compte</i> (a) For the purpose of calculating the compensation ower following formula shall apply: $N = (S / (P2 / P1)) - S$ Where: $N = Number of Shares to be issued.$ $S = Number of Shares held by the Foundation.$ $P1 = Valuation of the Company for purposes hereof, 1$	ensating Capital Increase). If in Shares for the Foundation's damages that occur	ur at the level of the Company, the	
4.5	 W = EUR amount of the damage, loss, expense, reduce breach, the Company as a consequence of the respect P2 = P1-W. (b) In the event that the Foundation incurs any damages a resulting from the mere fact that the value of the Company issued that corresponds to the amount of damages in The following limitations shall apply to any claims under Claus intentional misrepresentation (vorsätzliche Garantieverletzung) 	etion in value, or cost of, or incurred by, or necessary Guarantee not being true, accurate and complete as a result of a Breach of Guarantee at shareholder apany be reduced), the Foundation shall receive suggested by the Foundation divided by the US se 4.4 above (provided that none of these limitations)	ary to be incurred to remedy the ete. The level (i.e. other than damages are number of new Shares to be SD Issuance Price. The level (i.e. other than damages are number of new Shares to be SD Issuance Price.	
	 (a) The Company shall be liable for any breach of a Busing that breach exceeds EUR 500,000 and the total of the EUR 2,000,000; provided, however, that should such shall be entitled to recover the full amount of such loss to the liability of the Company shall be limited such that 100% of the Foundation Shares and do not exceed 75 	losses arising to the Foundation with respect to all total losses exceed EUR 500,000 and EUR 2,000,000 ses.	of the breaches occurred exceeds ,000, as applicable, the Foundation suant to Clause 4.4 do not exceed	
4.6	(c) The Company shall not be liable pursuant to Clause 4 basis of a claim (anspruchsbegründende Umstände) variantees referred to in Schedule 3 and attached to a Closing Date only, where after the date hereof circums complete, such circumstances have been notified to the further, that no such notification shall be deemed to complete. (d) Any claims based on a breach of a Title Guarantee should be on a breach of Business Guarantees shall expire (verjetter). The remedies for Breach of Guarantees set forth in this Investment of Guarantees, expent for any claims based on intentional migrantees.	were duly (<i>i.e.</i> fully and specifically) disclosed in a his Investment Agreement or, with respect to a brestances have arisen as a result of which a Guarante are Foundation in writing by the Company prior to the areany breach of the Guarantees as of the date her all expire (<i>verjähren</i>) within five (5) years after the <i>ähren</i>) within two (2) years after the Closing Date.	any of the Exhibits Business each of the Guarantees as of the see is not true, accurate and the Closing Date and, provided reof. The Closing Date. Any claims based The Foundation for Breach of	
5.	Guarantees, except for any claims based on intentional misrepretort (vorsätzliche Schädigung) or fraud (Betrug) for which neit of the Foundation based on, or relating to, any defects in qualitarelating to the status and condition of the Company and/or its a Investment Agreement. Any further warranty claims (Gewährlt situation of the Company or its assets, whether for damages (Sc (Anfechtung) irrespective of its legal basis, whether based on la performance (culpa in contrahendo, positive Vertragsverletzum (unerlaubte Handlung) shall be excluded and waived by the Foundation with the status and condition of the Company or its assets.	ner the limitations set forth in Clause 4.4 nor Clause y or title (Sach- oder Rechtsmängel), or otherwise ssets, liabilities, financials or business, shall exclusive eistungs ansprüche) in connection with defects of the chadeners at 2), reduction of price (Minderung), reserve or contract, including but not limited to claims by or claims based on frustration of contract (Störus bundation.	ise 4.5 shall apply. All other claims in respect of any circumstances asively be governed by this the economic, financial or legal scission (<i>Rücktritt</i>) or avoidance based on non-contractual sung der Geschäftsgrundlage) or tort	
7.	The Foundation shall have the right to withdraw its investment Shareholders' Agreement Subject to the Amended SHA taking effect, the Foundation her in relation to its accession to the Amended SHA and, as a matter provision promptly upon the Conditions having been satisfied. such acceptance of such offer is conditional on the Foundation Final Provisions	eby declares acceptance of the offer made to it in Cer of precaution, agrees to reiterate such declaration. The Parties acknowledge and agree that the access	Clause 24.4 of the Amended SHA on in the form prescribed by such sion agreement brought about by	
7.1	 Signing process (a) This Investment Agreement is entered into by way of transmitting the original or an electronic copy of the spages of this document) to the respective other Party. (b) The Company shall make available a copy of this Inverceived the signature pages from the Foundation and No Assignment of Rights and Obligations Any assignment of rights and/or obligations resulting from or in 	estment Agreement including the signatures of all itself has signed (also for the purposes of para. (a)	Parties promptly upon it having	
7.3	other Party hereto except for assignments to an Affiliate of the Confidentiality Clause 13 of the Letter Agreement shall apply <i>mutatis mutandu</i> this Agreement being substituted for the Letter Agreement. The terminated or becoming ineffective. Written Form and Entire Agreement / Amendments (a) Save as contemplated in this Investment Agreement, sentence, this Investment Agreement constitutes the exprevious agreements and understandings between the	s with, as concerns the subject matter of the confidence of the co	ement and subject to the succeeding its subject matter and supersedes all	
7.5	Annex 31.2 to the Shareholders' Agreement. (b) Amendments to this Investment Agreement, including enforceable and effective unless mandatory law requires the written the state of a copy of the executed original shareholders of this Investment Agreement requires the written form or in writing. Costs All costs incurred by the Parties in connection with this Investment.	g this written form requirement itself, must be made res a stricter form. Itten form or a declaration or other act to be made all suffice. Any notice required or contemplated to in text form (<i>Textform</i>) (including by email), subj	de in writing in order to become in writing, the submission by be given pursuant to or for ject to any requirement herein for	
7.6	Notices Clause 22 of the Shareholders' Agreement as to addresses and by the Shareholders' Agreement being terminated or becoming Severability In the event any provision hereof is or shall become invalid or	this Investment Agreement or the Shareholders A 11 22 certain authorities shall apply <i>mutatis mutandis</i> . The ineffective.	This provision shall not be affected	
7.8	the invalid or unenforceable provision, such valid and enforceathe intended economic purpose of the invalid or unenforceable agree on such valid and enforceable provision. Choice of Law and Resolution of Disputes (a) This Investment Agreement shall be governed by the law rules. (b) All disputes arising in connection with this Investment Rules of the German Institution of Arbitration (Deuts courts of law. The place of arbitration is Frankfurt, German Institution is Frankfurt, German Institution of Arbitration (Deuts courts of law. The place of arbitration is Frankfurt, German Institution is Frankfurt, German Instituti	ble provision shall be deemed to be agreed upon we provision. Without prejudice to the preceding sent class of the Federal Republic of Germany without at Agreement or its validity shall be finally settled the Institution für Schiedsgerichtsbarkeit (DIS) e.	which most closely corresponds to tence, the Parties shall expressly recourse to the German conflicts of in accordance with the Arbitration <i>V</i> .) without recourse to the ordinary	
Signa [***] Nam [***]	English. NTech SE atures: [] e(s) of individual(s) signing: ction(s) of individual(s) signing:	Bill & Melinda Gates Foundation Signatures: [***] Name(s) of individual(s) signing: [***] Function(s) of individual(s) signing:		
1.			ithdrawal Right as defined in Clause	
	1.1 of Schedule 4 is exercised.	Schedule 2 Amended SHA 14 22 Schedule 3		
 1. 2. 3. 	The financial statements of the Company and of the Group each accordance with and fairly present the financial condition and according to the German Commercial Code (<i>Handelsgesetzbuce</i>). Each Group Company has been granted all governmental permove which could materially and adversely affect the business, proposen revoked or can be revoked as a result of the relevant Group Subject. No Group Company is in material violation of any applicable states.	h as of 31 December 2018 as presented to the Inverperating results of the Company and the Group, result, HGB). its necessary for the conduct of its business as now extress, prospects, or financial condition of the Company not having complied with conditions that tatute, law or regulation relating to the environment	w being conducted by it, the lack of apany, and none of such permits has to which the relevant permit is	
4.5.6.	and no material expenditures are or will be required in order to To the Company's Knowledge each Group Company owns, or trademarks, service marks, trade names, copyright, internet dorintellectual property rights, including, without limitation, all approperty that Group Company without any conflict with of To the Company's Knowledge, there is no violation or infringed Except as set out in [***] no action, suit, proceeding or investigations any Group Company that might result, either individual financial condition of that Group Company.	is licensed to use, all patents, patent applications, on ain names, trade secrets, information, proprietary plications therefore necessary for its research, dever infringement of the rights of others. ment by a third party of any of the Company's right gation is pending or, to the Best Knowledge of the	design and utility models, y rights and processes and other velopment and similar activities as hts in its intellectual property. c Company, currently threatened	
7. 8. 9.	No Group Company is a party or subject to the provisions of an agency or instrumentality. Within the three years prior to the date hereof, other than to and of its assets or its intellectual property rights to any party which the Company or a member of the management or supervisory be member. Except as set out in [***] the Group Companies have always coscial security contributions and have always paid Taxes and discontributions. <i>Taxes</i> means all direct or indirect federal, state, it	other Group Company, none of the Group Compan of at the relevant time was or as of the date hereof is board or any affiliate of such shareholder or manage complied with the relevant provisions with respect to uties when due, and in particular have properly with ocal or foreign taxes, assessments, stamp duties, re-	nies has disposed of or licensed any is a direct or indirect shareholder of gement or supervisory board to wages, Taxes, pensions and ithheld and paid the employees	
10.	public law charges of any kind, including without limitation, so tax or additional amounts imposed by any governmental author. None of the Group Companies, nor to the Best Knowledge of to of the Group Companies is currently subject to any U.S. sancti Department (<i>OFAC</i>), and the Company will not directly or ind make available such proceeds to any Group Company, joint ve Syria, Sudan, Myanmar or any other country sanctioned by OFany U.S. sanctions administered by OFAC.	the Company, any director, officer, agent, employed ons administered by the Office of Foreign Assets Carectly use the proceeds of the sale of the Shares, on ture partner or other person or entity, towards any	re, or person acting on behalf of any Control of the U.S. Treasury or lend, contribute or otherwise y sales or operations in Cuba, Iran,	
11. 12.	The operation of each of the Group Companies are and have be applicable jurisdictions, the rules and regulations thereunder are enforced by any applicable governmental agency (collectively, court or governmental agency, authority or body or any arbitrar Laws is pending, or to the Best Knowledge of the Company, the None of the Group Companies nor, to the Best Knowledge of the directly or indirectly, (i) has used any funds or will use such further entertainment or other unlawful expenses related to foreign or government officials or employees or to any foreign or domest contribution made by the Company (or made by any person account of the company).	Id any related or similar rules, regulations or guide the " <i>Money Laundering Laws</i> "), and no action, so or involving any of the Group Companies with restreatened. The Company, any person authorized to act on behands or any proceeds from the sale of the Shares for domestic political activity, (ii) made any unlawful to political parties or campaigns from corporate furting on its behalf of which the Company is aware)	elines, issued, administered or suit or proceeding by or before any spect to the Money Laundering alf of any of the Group Companies, r unlawful contributions, gifts, payment to foreign or domestic ands, (iii) failed to disclose fully any which is in violation of law, or	
1.	(iv) violated in any material respect any provision of the Foreign thereunder. When the condition Precedent for Withdrawal Right and Definitions Subject to the issuance of the Foundation Shares and the payments.	Schedule 4 Sithdrawal Right	the rules and regulations	
1.1	 Clauses 2 through 4 of this Schedule (the <i>Withdrawal Right</i>). The following definitions apply: (a) Available Liquidity means the liquidity which the Coan insolvency event pursuant to section 17 German In (b) Current Foundation Shares means all of the Foundation (c) Exercise Date means the date of a Put-Option Exercited) (d) FMV Purchase Price shall mean (i) if the Shares or a Share or per right or certificate (collectively the ADS) 	mpany can apply to making payments under this Vasolvency Code (<i>Insolvenzordnung, InsO</i>). tion Shares collectively held by the Foundation and se. For the avoidance of doubt there may be more to hights or certificates representing the Shares are free on the last day preceding the Exercise Date on whether the state of the state o	Withdrawal Right without triggering and its Affiliates at the relevant time. That one Exercise Date. Seely tradable, the closing price per which the Shares or rights or	
2. 2.1	certificates were traded on the relevant exchange or to value of the Company divided by the number of Shar unreasonably withheld) independent third-party apprature. (e) <i>Minimum Purchase Price</i> shall mean the [***]. (f) <i>Unrestricted Reserves</i> shall mean the unrestricted reserves Corporation Act (<i>Aktiengesetz</i> , <i>AktG</i>). Put-Option The Company irrevocably grants to the Foundation and its Affir Foundation Shares to the Company pursuant to the terms set on	ading facility or (ii) if the Shares are not freely traces outstanding as determined by a mutually agreed isser. erves of the Company in accordance with section and the company in accordance with section at in this Clause 2 (the <i>Put-Option</i>) provided that the company in the	ndable, the then current fair market d upon (such agreement not to be 71 para. 2 sentence 2 German Stock on to sell and transfer the	
2.2	exercised for all of the Current Foundation Shares, subject to C Irrespective of whether or not an Option Readiness Notice (as following the occurrence of a Charitability Default as defined it giving the Company an exercise notice stating (i) that the Foundation Sh to Clause 2.4 below). The price for each Foundation Share shall be the Minimum Pure.	lause 2.4 below. defined in Clause 2.8) has been given, the Put-Option the Letter Agreement (the <i>Put-Option Exercise</i>) dation or the relevant Affiliate is exercising the Putares in respect of which the Put-Option is exercised 17 22	tion can be exercised at any time) by the Foundation or its Affiliates ut-Option; (ii) the date on which the ed (the <i>Put-Option Shares</i> , subject	
2.4 2.5 2.6	In the event that the Purchase Price Put Option (save for the efficient Liquidity as of the relevant Exercise Date, the number of the Presults from Clause 2.3 is equal to or lower than (but comes as Liquidity as of the relevant Exercise Date. In the event the number of the Presults of the relevant Exercise Date. In the event the number of the Option of this Schedule 4 will continue to apply with the Purchase Price Put Option shall be due and payable net of The Foundation or its Affiliate, as the case may be, shall enter will be assigned to the Company subject to receipt of the Purchase	ut-Option Shares shall be reduced such that the Puclose as possible to) each of the amount of Unrestrater of Put-Option Shares is reduced pursuant to the rith respect to all remaining Foundation Shares. costs within 90 Business Days after the Put-Option into a transfer and assignment agreement pursuant	archase Price Put Option as then cricted Reserves and the Available his Clause 2.4, the Put-Option and on Exercise.	
2.7 2.8	The Foundation Shares sold pursuant to the Put-Option shall be At each time when there are Unrestricted Reserves and Availab Put-Option Shares as determined pursuant to Clause 2.2 and 2. Shares the Company shall notify the Foundation in writing of the amount of the Unrestricted Reserves, also of the amount of may determine in its full discretion whether it wishes to exercise Foundation holds any of the Foundation Shares, the Company following the end of a calendar quarter of the amount of the Unlower than the amount of Unrestricted Reserves. Sale to Third Party	ble Liquidity such that in the event of a Put-Option 4 would be at least [***]% of the Foundation Shar the amount of Unrestricted Reserves and, in case the Available Liquidity (<i>Option Readiness Notice</i> se the Put-Option. In any event, following a Charit shall notify the Foundation at least by the fifteenth	n Exercise the number of the res or all of the Current Foundation the Available Liquidity is lower than e), following which the Foundation tability Default, as long as the n business day of each month	
3. 3.1	As long as the Foundation Shares have not been transferred to (a) at the request of the Foundation, the Company shall, a purchase all Foundation Shares held by the Foundation (such request the <i>Sale Request</i>) (for clarity the FMV agreement in that respect); and (b) the Foundation is entitled to sell all Foundation Shares that is not a Direct	without undue delay and using reasonable best efform or its Affiliates for no less than the Minimum Purchase Price shall be determined as of the date of	orts, locate a third-party that will urchase Price per Foundation Share of conclusion of a binding purchase	
	Competitor (as defined in the Letter Agreement) whe where such sale is following an IPO, in each case wit exception of, if applicable, accession to a shareholder Company will take all measures to the extent such me limited to, following an IPO (as defined in the Shareh Foundation or its Affiliates over the relevant stock ex registering such sale of the Foundation Shares on an Rule 144 of the Securities Act without volume limitar issued to the Foundation in exchange for the Foundat will use its reasonable best efforts to liquidate the Foundation in the Company's stock or ADS trading price	hout any restrictions to such transfer of Foundations' agreement to which the Foundation or its success assures are not unreasonable, to facilitate such sale colders Agreement), all measures required for a sale change, e.g. in case of a listing of such Foundation effective registration statement unless such sale carries. The Foundation agrees that if it sells the Foundation Shares (a Foundation ADS)) pursuant to this Standation Shares or Foundation ADSs in a manner tee, as applicable, which may include seeking a block	n Shares attached to it with the ssor or Affiliates is a party and the e to a third party, including, but not le of the Shares held by the n Shares at a US stock exchange, n be effected to the public under andation Shares (or any ADS that is Section 3.1(b) following an IPO, it that will avoid causing a material eck trade with a private purchaser or	
4.	decrease in the Company's stock or ADS trading pric spreading the sales out over time; provided that nothin Shares or Foundation ADSs in a manner the Foundation prudent investor standards. To the extent permissible Company when it has mandated a securities broker in Foundation has executed a block trade. Report on Holdings for Company's Accounting Purposes By the fifteenth day of each month following the end of any car Foundation ADSs held by the Foundation during such calendar Shares or Foundation ADSs being held by the Foundation or it	e, as applicable, which may include seeking a blocking in this provision will limit the Foundation's right on determines is necessary to comply with applicate under applicable securities and other laws, the Foundation to a sale of the Foundation Shares or the lendar quarter, if there has been any change in the quarter, the Foundation shall disclose to the Comp	ck trade with a private purchaser or ht to liquidate the Foundation able law, including applicable undation shall promptly inform the Foundation ADSs or if the number of Foundation Shares or apany the amount of any Foundation	
5.5.15.2	Specific Obligations to ensure the Withdrawal Right The Parties agree that the purpose of the Withdrawal Right is to divest the Foundation Shares held by the Foundation or its A If, for whatever reason, legal or otherwise, (i) after the Foundation Shares for legal or other reasons, e.g. the Company third party to acquire the Foundation Shares pursuant to Clause as many of the Current Foundation Shares for the Minimum	ensure the Foundation's ability, following the occupation has exercised its Put-Option, the Company is a not having sufficient Unrestricted Reserves or (ii)	currence of a Charitability Default, ice per Foundation Share. unable to redeem all of the Current) the Company is unable to locate a	
5.3	Purchase Price per Foundation Share (for clarity the FMV Purchase agreement in that respect) as are legally permissible and can be purchase of the remaining Foundation Shares for the Minimum as the Foundation and its Affiliates no longer hold any Shares. If the Foundation sells its Foundation Shares pursuant to Claus has issued a Sale Request and (ii) two months have passed since purchaser, to the extent permitted by law, the Company will conformable to the Shares and the amount of the Minimum Price shall be determined as of the date of conclusion of a bind Company shall have the right to defer the payment of the Shares.	hase Price shall be determined as of the date of co acquired out of Available Liquidity and continuous. Purchase Price per Foundation Share, consistent via e 3.1(b) of this Schedule and prior to selling its Fo e such Sale Request without the Company having impensate the Foundation for any difference between mum Purchase Price times the Foundation Shares sing purchase agreement in that respect) (such difference	usly use its best efforts to effect the with applicable law, until such time bundation Shares (i) the Foundation presented a suitable third-party een the amount received by the sold (for clarity the FMV Purchase erence the <i>Shortfall Amount</i>). The	
5.4	Price shall be determined as of the date of conclusion of a bind Company shall have the right to defer the payment of the Short (the <i>Shortfall Amount Note</i>) for the amount due which will be payable in full in the event of an Acquisition Transaction (as do To the extent permitted by law and subject to Clause 5.5, for as Company to compensate the Foundation for a Shortfall Amour (a) the Company shall procure that no dividends are paid redeemed (other than repurchases at cost of Shares of performing services for the Company or any Affiliate Shares upon the occurrence of the termination of emp Company in respect of the share capital held by such	fall Amount into [***]. The Company will issue that interest at a rate of [***]% per annum and will is efined in the Letter Agreement). long as the Foundation holds Shares or there is an t, on any of its share capital, no Shares of any other the share capital from employees, officers, directly pursuant to agreements under which the Company loyment or service) and no other distribution to an	the Foundation a promissory note immediately become due and nobligation outstanding from the Shareholder of the Company are ors, consultants or other persons y has the option to repurchase such my other Shareholder of the	
5.5	Company in respect of the share capital held by such (b) annual profits shall, to the extent permitted by law, be Current Foundation Shares (the <i>Aggregate USD Issu</i> any time following a Charitability Default for any rea (under the Put-Option or pursuant to Clause 5.2) or the a Shortfall Amount (the time during which either such to contribute annual profits to the Unrestricted Reserve Foundation Shares (the <i>Aggregate Minimum Purcha</i> Any Distribution shall be permitted and the Build-up Obligation	contributed to the Unrestricted Reserves up to the ance Price and such obligation the Build-up Obligation either the Company has not repurchased any of the ere is an obligation outstanding from the Company in case exists, the Default Period) the Build-up Obligation to the amount equal to the Minimum Purchase Price) rather than the Aggregate USD Issuance	e USD Issuance Price times the <i>gation</i>), provided however that if at or all of the Foundation Shares by to compensate the Foundation for oligation shall require the Company ase Price times the Current	
	 (a) prior to a Default Period: to the extent the Unrestricted exceed the Aggregate USD Issuance Price, (b) during a Default Period: to the extent the Unrestricted the Aggregate Minimum Purchase Price, but only at expoundation has not after such Option Readiness Notice Notice and only for as long as the Foundation does not during a Default Period in the event that the only remaining amounts due under the Shortfall Amounts. 	d Reserves of the Company as of the annual finance ach time after the Company has given an Option Fee exercised the Put-Option within one month after after such Option Readiness Notice exercise the aining obligation of the Company with respect to the	rial statements reference date exceed Readiness Notice and the receiving such Option Readiness Put-Option and the Withdrawal Right is payment of	
5.66.7.	Notwithstanding anything in this Schedule 4, the Company shat the Withdrawal Right to the largest extent permitted by law. In Company shall effectuate any measures required to effect the Vagreements, obtaining the supervisory board's approval for the treasury shares pursuant to section 71 para. 1 no. 8 German Sto Company. Costs The Company shall pay all fees and expenses incident to the permitted by law. In Company shall pay all fees and expenses incident to the permitted by law. In Company.	Il use best endeavors to cause such arrangements the event any such arrangements shall become invited withdrawal Right. Such measures <i>inter alia</i> include transfer of the Foundation Shares or obtaining a neck Corporation Act (<i>Aktiengesetz</i> , <i>AktG</i>) from the	to be made as is required to effect valid or unenforceable, the e the execution of new put-option new authorization for purchasing e shareholders' meeting of the	
7.	For the avoidance of doubt it is understood by the Parties that to Global Access Commitments (as defined in the Global Access to this Schedule 4 and the Foundation shall continue to be entity projects.	Commitments) shall continue regardless of a sale	of the Foundation Shares pursuant	