

**Joint Report of the Executive Board of Merck KGaA, Darmstadt, Germany, and the Management Board of BSSN UG (haftungsbeschränkt), Darmstadt, Germany, on the control and profit and loss transfer agreement of February 6, 2020 pursuant to Section 293a of the German Stock Corporation Act ("AktG")**

According to Section 293a AktG, the Executive Board and the Management Board of the involved companies are required to prepare a written report on the agreement.

Specifically:

1. Closing of the agreement, entry into force

On February 6, 2020, as the controlling company, Merck KGaA, Darmstadt, Germany (hereafter referred to as "**Parent Company**") entered into a control and profit and loss pooling agreement (hereinafter "**Agreement**") with BSSN UG (haftungsbeschränkt), Darmstadt, Germany (hereinafter referred to as "**Controlled Company**"). The effectiveness of the Agreement is subject to the approval of the General Meeting of the Parent Company and the approval of the shareholders' meeting of the Controlled Company. The approval resolutions will be put forward to the Annual General Meeting of the Parent Company on April 24, 2020. The shareholders' meeting of the Controlled Company approved the Agreement on February 6, 2020. The Agreement shall take effect when it is entered in the Commercial Register located at the registered office of the Controlled Company.

2. The parties to the Agreement

a) Merck KGaA, Darmstadt, Germany

The Parent Company domiciled in Darmstadt, Germany, registered with the Commercial Register of Darmstadt under HRB 6164, is a publicly listed corporation with general partners and the parent company of the operating businesses that comprise the Group. The fiscal year of the Parent Company is the calendar year.

According to the articles of association, the object of the Parent Company is the production and sale of chemical and biotechnological products, especially pharmaceutical products, basic substances for pharmaceutical products, fine chemicals, industrial chemicals, pigments, substances for cosmetics, the production, sale and trade of products and equipment for laboratory use, particularly reagents and diagnostic products, the development, acquisition and exploitation of chemical processes and equipment. The company is entitled to engage in all businesses and take all measures that appear suited to serving the object of the company. For this purpose, it may in particular perform services, purchase, administer and sell land, set up, acquire and hold interests in other companies, as well as manage such companies or limit its activities to administering the investment holding. Moreover, the company is entitled to perform its business activities also through subsidiaries, affiliates and joint ventures. It may demerge its operations either partly or in full to affiliates or delegate operations to affiliates.

The members of the Executive Board of the Parent Company are the general partners with no equity interest: Mr. Stefan Oschmann, Mr. Udit Batra, Mr. Kai Beckmann, Ms. Belén Garijo Lopez and Mr. Marcus Kuhnert.

## English reading version

The Parent Company is legally represented by two personally liable general partners without an equity interest or a personally liable partner without an equity interest together with an authorized signatory with special power of attorney (*Prokurist*). If only one personally liable general partner without an equity interest has been appointed, he/she shall represent the Parent Company alone. Moreover, the Parent Company is represented by an authorized signatory with special power of attorney or another authorized signatory in accordance with specific instructions of the personally liable general partners without an equity interest.

### b) BSSN UG (haftungsbeschränkt), Darmstadt, Germany

The Controlled Company was established on February 26, 2013. The Controlled Company is domiciled in Darmstadt, Germany, and registered with the Commercial Register of Darmstadt under HRB 99457. The fiscal year of the Controlled Company is the calendar year. The Controlled Company's share capital amounts to 1,000.00 €. All interests in the Controlled Company are held by the Parent Company.

The managing directors of the Controlled Company are Mr. Sebastian Griesel and Stephan Lahrkamp. In principle, the Controlled Company is represented by two managing directors jointly or by one managing director together with an authorized signatory with special power of attorney (*Prokurist*). If only one managing director has been appointed, he/she shall represent the Controlled Company alone.

According to the articles of association, the object of the Controlled Company includes the management of own assets and ownership interests as well as trade and the provision services in the IT sector. The Controlled Company is entitled to take any actions and legal measures which are, directly or indirectly, deemed necessary or expedient to serve its purpose. The Controlled Company may establish subsidiaries in Germany and abroad, acquire other companies in Germany and abroad, participate in other companies and conclude company agreements with other companies.

The Controlled Company concluded on February 6, 2020 a control and profit and loss transfer agreement with BSSN Software GmbH with seat in Darmstadt, Germany, registered with the commercial register of the local court in Darmstadt under HRB 91938 (hereinafter "**BSSN Software**") as controlled company, pursuant to which BSS UG (haftungsbeschränkt), Darmstadt, Germany may have to bear any potential losses pursuant to Section 302 of the German Stock Corporation Code ("**AktG**").

### 3. Earnings situation of the Controlled Company and of BSSN Software

The Controlled Company currently has no employees. The fiscal year of the Controlled Company runs from January 1 until December 31 of each year. In 2018 the Controlled Company realized an annual profit amounting to 6,119,88 €. As of December 31, 2018, the balance sheet of the Controlled Company shows a total balance of 17,537.53 € and an equity capital amounting to 935,97 €.

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BSSN Software currently has around 15 employees. The fiscal year of BSSN Software runs from

January 1 until December 31 of each year. In 2018 BSSN Software realized an annual profit amounting to 195,914.13 €. As of December 31, 2018, the balance sheet of BSSN Software shows a total balance of 1,133,610.91 € and an equity capital amounting to 694,489.36 €.

#### 4. Explanation of the Agreement and the reasons for entering into the Agreement

The essential content of the control and profit and loss transfer agreement is as follows:

The Controlled Company subordinates its management to the Parent Company. Accordingly, the Parent Company is entitled to issue instructions to the Controlled Company as regards the management of the company (Section 2 of the Agreement). The management of the Controlled Company retains full authority to make decisions if and to the extent no instructions are issued (Section 3 of the Agreement).

The Controlled Company shall transfer all of its profits to the Parent Company during the term of the Agreement. Subject to the setting up of reserves under the provisions of the Agreement (see the following explanations), the Controlled Company shall transfer the net income arising without profit transfer less any losses carried forward from the previous year and the amount protected from distributions according to Section 268 (8) of the German Commercial Code ("HGB") plus any other amounts withdrawn from retained earnings under the provisions of the Agreement (see the following explanations on withdrawals from retained earnings). However, the profit transfer may not exceed the amount stated in Section 301 AktG, the respectively valid version of which shall be applied. The transfer of profits stemming from the release of capital reserves (Section 272 (2) No. 4 HGB) or retained earnings reported prior to the Agreement (Section 272 (3) HGB) or from profit carried forward prior to the Agreement, shall be ruled out (Section 4 (1) of the Agreement).

With the approval of the Parent Company, the Controlled Company may transfer amounts from net income to retained earnings in accordance with Section 272 (3) HGB provided this is permitted under German commercial law and it is considered economically justifiable using reasonable commercial judgment (Section 4 (2) of the Agreement).

Other retained earnings set up during the term of the Agreement in accordance with Section 272 (3) HGB are to be released if demanded by the Parent Company and to be used to offset an annual loss or any loss carried forward or to be transferred as profit (Section 4 (3) of the Agreement).

The entitlement to profit transfers shall arise at the end of the Controlled Company's fiscal year and is effective and due as of this date (Section 4 (4) of the Agreement).

In accordance with the provisions of the currently valid version of Section 302 AktG, the Parent Company shall offset any other annual losses during the term of the Agreement provided that these are not offset by using other retained earnings for offsetting an annual loss during the term of the Agreement. The amount of the loss to be assumed will not be lowered by releasing capital reserves or retained earnings reported prior to the Agreement and by profit carried forward prior to the Agreement (Section 5 (1) of the Agreement).

The entitlement to offset any losses shall arise at the end of the Controlled Company's fiscal year and is effective and due as of this date (Section 5 (2) of the Agreement).

The Parent Company has the right to demand advance payments in the course of the fiscal year with respect to expected profit transfers by the Controlled Company provided that the liquidity of the

## English reading version

Controlled Company permits such advance payments to be made. No interest will be paid on the profit transfer account (Section 7 of the Agreement).

Section 8 (1) of the Agreement stipulates that the Agreement requires the approval of the Annual General Meeting and the shareholders' meeting of the companies entering the Agreement.

The Agreement shall take effect when it is entered in the Commercial Register of the court located at the registered office of the Controlled Company. With the exception of the Parent Company's right to issue instructions, it shall apply retroactively as of January 1, 2020, 0:00, meaning for the first time in the Controlled Company's fiscal 2020. The provision concerning the Parent Company's right to issue instructions shall take effect only once the Agreement has been entered in the Commercial Register of the court at the registered office of the Controlled Company (Section 8 (2) of the Agreement).

The Agreement has been entered into indefinitely. It may not be terminated before a period of five years, as of the start of the Controlled Company's fiscal year in which the Agreement took effect, has expired (minimum term), at the earliest however until the expiry of December 31, 2024. Subject to the adherence to the minimum term, the Agreement may be terminated in writing at the end of each fiscal year of the Controlled Company by giving three months' notice. This does not affect the right to terminate the Agreement without notice for good cause. Good cause includes in particular the merger, split or liquidation of one of the two companies entering the Agreement. Moreover, the Parent Company is entitled to terminate the Agreement for good cause if it no longer holds the majority of the voting rights in the Controlled Company (Section 8 (3) of the Agreement).

The Parent Company is the sole shareholder of the Controlled Company. Pursuant to Section 293b (1) AktG there is no requirement for a review of the Agreement by expert examiners due to the absence of third-party shareholders. For the same reason, the Parent Company is not obligated to make compensation payments pursuant to Section 304 AktG or guarantee settlements pursuant to Section 305 AktG in connection with the closing of the Agreement. Apart from the obligation of the Parent Company to offset losses, in the viewpoint of the limited liability shareholders of Merck KGaA, Darmstadt, Germany, the Agreement therefore does not lead to any special consequences.


The closing and the effective execution of the Agreement are necessary in order to be able to conduct restructuring and integration activities within the Group at a later date.

Moreover, tax reasons are one of the main factors supporting a control and profit and loss transfer agreement. Subsequent to the closing of the Agreement, the Parent Company and the Controlled Company are consolidated for both corporation tax and trade tax purposes, thereby making it possible to net their profits and losses already in the first year in which they are incurred. Entering into control and profit and loss transfer agreements lowers the corporation tax and trade tax burden on the German part of the Group. This means of tax optimization cannot be achieved by alternative measures.


A summary evaluation of the Agreement indicates that the Agreement is advantageous to both the Parent Company and the Controlled Company.

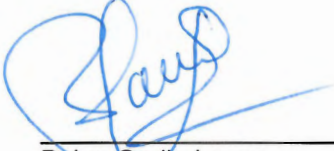
**Merck KGaA**

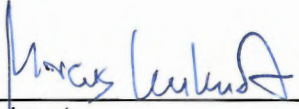
Darmstadt, Germany, February 14, 2020

  
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Stefan Oschmann

  
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Udit Batra

  
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Kai Beckmann

  
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Belen Garijo Lopez

  
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Marcus Kuhnert

English reading version

**BSSN UG (haftungsbeschränkt)**

Darmstadt, Germany, February 14, 2020



Sebastian Griesel



Stephan Lahrkamp