

PROFIT AND LOSS TRANSFER AGREEMENT (TAX GROUP AGREEMENT)

Between

- (1) **TUI AG** registered with the commercial register of the local court of Berlin-Charlottenburg, HRB 321 and having its seat in Hanover, registered with the commercial register of the local court of Hanover under HRB6580 ("**TUI AG**")

(Parent Company);

and

- (2) **Leibniz-Service GmbH** registered with the commercial register of the local court of Hanover under HRB 6100 ("**LSG**"),

(Transferring Company).

(The Parent Company and the Transferring Company each a Party and collectively the **Parties**)

PREAMBLE

- (A) The Parent Company holds all shares in the Transferring Company after the shares in LSG have been effectively transferred from TUI Travel PLC to TUI AG.
- (B) It is intended to implement a tax group (*steuerliches Organschaftsverhältnis*) between the Parent Company and the Transferring Company with effect as of the beginning of the business year ending on 30 September.

Therefore, the Parties agree as follows:

§ 1 TRANSFER OF PROFITS

- (1) During the term of this Agreement, commencing at the start of the current business year, the Transferring Company undertakes to transfer, in accordance with Section 301 of the German Stock Corporation Act (*Aktiengesetz, AktG*) in its respective current version, all of its profits to the Parent Company. The amount of the profits to be transferred may not exceed the amount calculated in accordance with Section 301 of the German Stock Corporation Act (*Aktiengesetz, AktG*) in its respective current version.
- (2) With the consent of the Parent Company, the Transferring Company may allocate a proportion of its annual net income into its earned surplus (Section 272 para. 3 of the German Commercial Code (*Handelsgesetzbuch, HGB*)), if and to the extent this is in line with commercial law and economically reasonable from a prudent business perspective.
- (3) Other earned surplus established during the term of this Agreement shall, upon the request of the Parent Company, be dissolved to the extent this is legally possible and shall be used to compensate an annual deficit or be transferred as profits.
- (4) Earned surplus other than the earned surplus mentioned in § 1 (3), in particular earned surplus accrued prior to the conclusion of this Agreement, may not be transferred as profits or be used to compensate an annual deficit of the Transferring Company. The same shall apply to retained earnings generated prior to the conclusion of this Agreement or to other surplus.

- (5) The obligation to transfer all profits shall apply for the first time for the Transferring Company's financial year, in which this Agreement becomes effective. The claim to receive profits vests as of the end of the financial year of the Transferring Company and will be due at the same point in time.

§ 2 ASSUMPTION OF LOSSES

- (1) The provisions set forth in Section 302 of the German Stock Corporation Act (*Aktiengesetz, AktG*) in its respective current version apply correspondingly.
- (2) The obligation to absorb any net loss shall be applicable for the first time for the Transferring Company's financial year in which this Agreement becomes effective.
- (3) Unless otherwise provided for in Section 2 (1), the claim for the loss absorption vests as of the end of the financial year of the Transferring Company and becomes due at the same point in time.

§ 3 CONSENT REQUIREMENT, EFFECTIVENESS

- (1) This Agreement requires the consent of the shareholders of the Transferring Company and the Parent Company. Upon conclusion of this Agreement the consenting resolution of the shareholders' meeting of TUI AG already exists.
- (2) This Agreement shall become effective with its registration in the commercial register at the headquarters of the Transferring Company. § 1 (5) and § 2 (2) of this Agreement shall remain unaffected.

§ 4 TERM; TERMINATION

- (1) This Agreement is effective for a term of five (5) calendar years, starting at the beginning of the business year of the Transferring Company, in which the obligations to transfer profits (§ 1) and to compensate losses (§ 2) apply for the first time. During this term this Agreement may only be terminated with cause (*aus wichtigem Grund*).
- (2) If the expiration of the five (5) calendar years (e.g. due to the implementation of an abbreviated fiscal year) occurs in the course of a business year of the Transferring Company, this Agreement shall terminate at the earliest at the end of such business year.
- (3) This Agreement is extended by one (1) year, if it is not terminated by a one (1) months prior notice to the end of its term or extended term (*ordentliche Kündigung*), such notice being admissible for the first time upon lapse of the business year after the minimum period of the tax group established by this Agreement has been met. For purposes of determining whether or not a notice was given in good time, the notice shall be deemed to be effected not on dispatch but upon receipt by the respective other party.
- (4) A termination of this Agreement prior to the expiration of its term is possible for good cause (*aus wichtigem Grund*). Good cause within the meaning of this Agreement is specifically the full or partial termination of the indirect or direct participation of the Parent Company in the Transferring Company by the Parent Company as well as the transfer of the shares in LSG by TUI AG or any other reorganisation such as for example a contribution of the shares in LSG or a conversion of LSG into a partnership, a merger or de-merger of any of the Parties or liquidation of any of the Parties.

§ 5 FINAL PROVISIONS

- (1) In deviation from Section 307 of the German Stock Corporation Act (*Aktiengesetz, AktG*) the shareholders of the Transferring Company (including any new shareholders) may resolve unanimously to continue this Agreement. In this case the term of this Agreement pursuant to § 4 shall not be disrupted.
- (2) Modifications of and amendments to this agreement are required to be in written form in order to be effective. This shall also apply for a waiver of the requirement of written form. In addition, Section 295 of the German Stock Corporation Act (*Aktiengesetz, AktG*) shall apply.
- (3) Should any individual provision of this contract be or become fully or partially void, or should there be a gap in this agreement, the validity of the remaining provisions shall not be effected. In such case, the void provision or gap shall be replaced by an adequate provision coming as close as possible to the Parties' consideration or the sense and spirit of this Agreement, as if they had taken this point into consideration. In addition, the parties shall agree on an alternative provision coming as close as possible to the economic and legal sense and spirit of the provision to be replaced.
- (4) The place of fulfilment of the respective obligations and the exclusive place of jurisdiction, including with regard to the question of the validity of this Agreement, shall be Hanover.

Hanover,

TUI AG

LSG
