

**PROFIT TRANSFER AGREEMENT (TAX GROUP AGREEMENT)**

between

- (1) **TUI AG**, with its registered office in Berlin, listed in the commercial register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Berlin-Charlottenburg under HRB 321, and with its registered office in Hanover, listed in the commercial register of the Local Court of Hanover under HRB 6580 ("**TUI AG**")

**(Tax Parent)**

and

- (2) **DEFAG Beteiligungsverwaltungs GmbH III**, with its registered office in Hanover, listed in the commercial register of the Local Court of Hanover under HRB 200803

**(Tax Subsidiary)**

(The Tax Parent and Tax Subsidiary each being referred to as a **Party** and collectively as the **Parties**)

**PREAMBLE**

- (A) The Tax Parent is the sole shareholder of the Tax Subsidiary.
- (B) It is intended to implement a tax group between the Tax Parent and the Tax Subsidiary with effect as of the beginning of the Tax Subsidiary's financial year ending on 30 September.

Now, therefore, the Parties agree as follows:

**CLAUSE 1 TRANSFER OF PROFITS**

- (1) The Tax Subsidiary undertakes to transfer all of its profits to the Tax Parent, in acknowledgement of section 301 of the German Stock Corporation Act (*Aktiengesetz*; "**AktG**") as amended, for the duration of this Agreement and for the first time in the current financial year. The profits transferred in this context must not exceed the amount to be determined in line with section 301 AktG, as amended.
- (2) Subject to the consent of the Tax Parent, the Tax Subsidiary may transfer some of the annual net profit to revenue reserves (section 272 (3) of the German Commercial Code (*Handelsgesetzbuch*; "**HGB**")), to the extent that this is permitted under commercial law and justified in economic terms, based on a reasonable commercial assessment.
- (3) Any other revenue reserves pursuant to section 272 (3) HGB accumulated during the term of this Agreement are to be realised at the request of the Tax Parent and to be used in order to set off any net annual losses or transferred as profit to the extent permitted by law.
- (4) Revenue reserves other than those specified in paragraph (3) above, in particular revenue reserves accrued prior to the conclusion of this Agreement, must not be transferred as profits or be used to compensate any annual net losses of the Tax Subsidiary. The same will apply

to any profit carryforward generated prior to the conclusion of this Agreement or to other reserves.

- (5) The obligation to transfer profits will apply for the first time for the Tax Subsidiary's full financial year in which this Agreement becomes effective. The claim to receive profits will arise as of the end of a financial year of the Tax Subsidiary and will be due at the same point in time.

#### **CLAUSE 2 ABSORPTION OF LOSSES**

- (1) The provisions set out in section 302 AktG, as amended, will apply *mutatis mutandis*.
- (2) The obligation to absorb losses will apply for the first time for the Tax Subsidiary's full financial year in which this Agreement becomes effective.
- (3) Insofar as it has not been provided for otherwise under paragraph (1) above, the claim to absorption of losses will arise at the end of the Tax Subsidiary's respective financial year and will be due at the same point in time.

#### **CLAUSE 3 APPROVAL REQUIREMENT; EFFECTIVENESS**

- (1) The Agreement must be approved by the shareholders' meetings of the Tax Subsidiary and the Tax Parent. Upon conclusion of this Agreement, approval has already been granted by the general meeting of TUI AG.
- (2) This Agreement will become effective upon entry in the commercial register for the Tax Subsidiary's registered office. This does not affect clauses 1 (5) and 2 (2) hereof.

#### **CLAUSE 4 TERM; TERMINATION**

- (1) This Agreement is concluded for a fixed term running for five (5) full years (*Zeitjahre*), starting at the beginning of the Tax Subsidiary's financial year in which the obligation to transfer profits (clause 1) or to absorb losses (clause 2) applies for the first time. During this term, the Agreement may only be terminated for good cause (*aus wichtigem Grund*).
- (2) If the five-year term ends in the course of a financial year of the Tax Subsidiary (e.g. due to the implementation of a short financial year), the Agreement will end at the end of that financial year at the earliest.
- (3) This Agreement will be automatically extended by one (1) year at a time if it is not terminated by giving one month's prior notice to the end of a financial year (*ordentliche Kündigung*), although such termination cannot apply earlier than with effect as of the expiry of the financial year at the end of which the minimum period specified under tax law for the corporate income tax group established by the Agreement has been completed. The date on which the notice of termination was received by the respective other Party shall be decisive in order to determine whether this notice period has been complied with.
- (4) This Agreement may be terminated early for good cause. Good cause in the sense of this provision shall in particular be deemed to exist where the Tax Parent fully or partially terminates its direct or indirect participation in the Tax Subsidiary, sells its shares in the Tax Subsidiary or any other reorganisation measures are taken, such as the shares in the Tax Subsidiary being rendered as a contribution, the Tax Subsidiary being transformed into a partnership, either of the Parties undergoing a merger or de-merger or either Party going into liquidation.

## CLAUSE 5 FINAL PROVISIONS

- (1) The Tax Subsidiary's shareholders may, in deviation from section 307 AktG, together with the new shareholders, unanimously resolve to maintain this Agreement. In such case, the term of the Agreement as set out in clause 4 hereof will not be interrupted.
- (2) Any amendments or supplements to this Agreement must be made in writing in order to be effective. This shall also apply to this written-form requirement. Section 295 AktG applies in all other respects.
- (3) Should any provision of this Agreement be or become invalid or impracticable or should this Agreement contain any gaps, this will not affect the validity and practicability of the remaining provisions hereof. The invalid or impracticable provision will be replaced or the gap filled by a valid and practicable provision coming as close as legally possible to the legal and economic purpose of the invalid or impracticable provision. In all other cases, the Parties must agree a provision coming as close as possible to the legal and economic purpose of the invalid or impracticable provision to replace it.
- (4) Hanover shall be the place of performance for the obligations of both Parties and the exclusive place of jurisdiction, including for questions relating to the effectiveness of this Agreement.

Hanover, (date)

**TUI AG**

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**DEFAG Beteiligungsverwaltungs GmbH III**

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