

## Agenda Item 11

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**Resolution on the approval of the profit and loss transfer agreements between Delivery Hero SE on the one hand and Delivery Hero Stores Holding GmbH, DH Financial Services Holding GmbH, Delivery Hero Kitchens Holding GmbH and Delivery Hero Innovations Hub GmbH on the other hand**

### “PROFIT AND LOSS TRANSFER AGREEMENT

between

**Delivery Hero SE**, registered with the commercial register of the Local Court of Charlottenburg under HRB 198015 B,

- hereinafter referred to as “**Delivery Hero**” -

and

**[Subsidiary]**, registered with the commercial register of the Local Court of [...] under HRB [...],

- hereinafter referred to as “**Subsidiary**” -

- Delivery Hero and Subsidiary are hereinafter also referred to collectively as the “**Parties**”

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Delivery Hero is the sole shareholder of Subsidiary.

Thus, Subsidiary has close economic and financial relations with Delivery Hero. In order to establish a fiscal unity according to Sections 14, 17 of the German Corporate Tax Act (Körperschaftsteuergesetz, KStG) and Sec. 2 para. 2 sentence 2 German Trade Tax Act (Gewerbesteuer-gesetz, GewStG) the following profit and loss transfer agreement (hereinafter referred to as the “**Agreement**”) shall be concluded.

## § 1

### Transfer of Profits

1. Subsidiary undertakes in analogy to Sec. 291 para. 1 sentence 1 var. 2 German Stock Corporation Act (Aktiengesetz, AktG) (profit and loss transfer agreement) to transfer its entire profits – subject to the creation and release of revenue reserves according to subsection 2 – within the meaning and to the extent of Sec. 301 AktG – to be applied as amended from time to time – to Delivery Hero.
2. Subject to approval of Delivery Hero, the Subsidiary may transfer amounts from its annual net income to the revenue reserves according to Sec. 272 para. 3 sentence 2 alt. 3 of the German Commercial Code (Handelsgesetzbuch, HGB) to the extent permissible under commercial law and economically justified according to prudent business judgment. Other revenue reserves according to Sec. 272 para. 3 sentence 2 var. 3 HGB created during the term of this Agreement must be dissolved upon request by Delivery Hero and used to offset an annual net loss or transferred as profit.
3. The transfer of amounts resulting from the dissolution of retained profit reserves generated prior to this Agreement and the transfer of amounts resulting from the dissolution of capital reserves according to Sec. 272 para. 2 HGB created prior to or during the term of this Agreement is excluded. Dissolution and distribution of such

revenue reserves created or accrued prior to this Agreement or from the dissolution of capital reserves according to Sec. 272 para. 2 HGB outside this Agreement is permitted.

4. During a fiscal year or prior to the approval of the annual financial statements of a fiscal year of Subsidiary, Delivery Hero may claim advance payments on any transfer of profits which will presumably become due for such business year if and to the extent the Subsidiary's liquidity allows for such advance payments. Any advance payments by Subsidiary are to be setoff with the actual amount of the profit transfer claim of Delivery Hero. If and to the extent the advance payments of Subsidiary exceed the actual profit transfer claim of Delivery Hero, the remaining excess difference has to be paid back by Delivery Hero to Subsidiary at Subsidiary's respective balance sheet date (Bilanzstichtag). If both Parties mutually agree, the excess difference, which is not paid back on the balance sheet date of Subsidiary, may be converted into an interest-bearing loan.
5. If this Agreement terminates during the course of a fiscal year, Subsidiary is obliged to balance Delivery Hero's claim for profit transfer incurred up to the date of termination. The (interim) balance sheet as per the date of termination shall be decisive (§ 5 para. 8 below).

## § 2

### Loss Absorption

1. Delivery Hero is obliged to compensate any loss of Subsidiary according to Sec. 302 AktG as amended from time to time.
2. During a fiscal year or prior to the approval of the annual financial statements of a fiscal year of Subsidiary, Subsidiary may claim advance payments on the

compensation for any net loss which it presumably will have if and to the extent that such advance payments are necessary to maintain the Subsidiary's liquidity. Any advance payments by Delivery Hero are to be setoff with the actual amount of the loss compensation claim of Subsidiary. If and to the extent the advance payments of Delivery Hero exceed the actual loss compensation claim of Subsidiary, the remaining excess difference has to be paid back by Subsidiary to Delivery Hero at Subsidiary's respective balance sheet date (Bilanzstichtag). If both Parties mutually agree, the excess difference, which is not paid back on the balance sheet date of Subsidiary, may be converted into an interest-bearing loan.

3. If this Agreement terminates during the course of a fiscal year, Delivery Hero is obliged to compensate the losses of Subsidiary incurred up to the date of termination. The (interim) balance sheet as per the date of termination shall be decisive (§ 5 para. 8 below).

### **§ 3**

#### **Maturity**

The obligation to transfer profits and offset losses, respectively, shall arise and become due on the date of the balance sheet of Subsidiary.

### **§ 4**

#### **Compensation and Settlement pursuant to Sections 304, 305 AktG**

No compensation or settlement pursuant to Sections 304, 305 AktG – applied mutatis mutandis – shall be paid to external shareholders of Subsidiary as there are no external shareholders.

### **§ 5**

#### **Effectiveness, Duration of the Agreement**

1. This Agreement is subject to the approval of the shareholder meetings of the Parties.
  
2. The Agreement shall become legally effective with its registration in the commercial register of Subsidiary and shall be effective from the beginning of the fiscal year of registration in the commercial register (at the earliest as of 1 January 2024).
  
3. This Agreement is entered into for an indefinite period of time.
  
4. The Agreement may be terminated by either Party with a notice period of three (3) months with effect as of the end of a fiscal year of Subsidiary. However, a termination of this Agreement is only possible at the earliest to the end of such fiscal year, after its expiration the period equivalent to the minimum term of a profit and loss transfer agreement required by tax law in Sec. 14 para. 1 sentence 1 no. 3 KStG for recognition of the fiscal unity for corporate income and trade tax purposes is fulfilled (under current German legislation five (5) years (60 months) calculated from the beginning (00:00 hours) of the fiscal year in which this Agreement becomes effective by registration in the commercial register of Subsidiary ("**Minimum Term**"). If this Agreement is registered in the fiscal year which begins on 1 January 2024 and if the fiscal year is not changed, the Minimum Term ends at midnight (24:00 hours) on 31 December 2028. If the fiscal year of Subsidiary is changed before the end of the Minimum Term, the Minimum Term shall be extended by the term of the short fiscal year which arises due to the change in the fiscal year without any separate declaration being required.
  
5. The right of termination for good cause shall remain unaffected. Delivery Hero shall be entitled to terminate the agreement for good cause, in particular if any of the following circumstances arises:

- a. Recognition of this Agreement for tax purposes is denied by a non-appealable tax assessment notice or court judgment or there is a risk of such denial due to administrative instructions;
- b. Delivery Hero does or will no longer hold the majority of the voting rights in Subsidiary or another shareholder is participating in Subsidiary;
- c. there is another good cause within the meaning of R 14.5 para. 6 of the German Corporate Income Tax Regulations 2022 (Körperschaftsteuer-richtlinien, KStR) or relevant provision applicable at the time this Agreement is terminated.

The above-mentioned circumstances are just exemplary.

6. Notice of termination must be made in writing.
7. At the time of expiration of the Agreement, Delivery Hero shall provide security to creditors of Subsidiary in accordance with Sec. 303 AktG.
8. An (interim) balance sheet shall be prepared as per the date of any termination.

## **§ 6**

### **Amendments to the Agreement**

Amendments or supplements to this Agreement must be made in writing.

**§ 7**

**Applicable Law**

This Agreement is exclusively subject to German law.

**§ 8**

**Final Provisions**

1. The provisions of this Agreement shall be construed such that the fiscal unity as intended by the Parties for income tax purposes shall become effective to its full extent. Should one of the provisions contained in this Agreement be or become ineffective, this shall in no way affect the legal effect of the other provisions of the Agreement. The contractual provision concerned shall be considered as replaced by another provision that comes closest to the purpose of the Agreement. The same applies in case of any gaps in the provisions of this Agreement.
2. To the extent that the application of statutory provisions has been agreed upon in this Agreement, such provisions shall apply mutatis mutandis in the relevant version effective at the time of its application, unless explicitly agreed otherwise in this Agreement.
3. In case of any conflict between the German and the English version of this Agreement, the German version shall prevail.

[Signature page follows]

[Signature lines of the parties]"

[End of the profit and loss transfer agreement]