

**Data Processing Agreement
("DPA")**

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Preamble

This Data Processing Agreement ("**DPA**") is included in the contract for the provision of CREWMEISTER products on premises and for an CREWMEISTER CLOUD SERVICE (each and collectively hereinafter referred to as "**CREWMEISTER PRODUCTS**") and other affiliated services or professional services (hereinafter referred to as "**CONTRACT**"). Therefore, this DPA is at the same time an integral part of a contract concluded in writing (also in electronic form) between the contracting CREWMEISTER company (as processor - hereinafter referred to as "**CREWMEISTER**") and the CUSTOMER. Both, CREWMEISTER and the CUSTOMER are hereinafter referred to collectively as the "**PARTIES**", each a "**PARTY**".

The PARTIES agree that the CUSTOMER may also allow its AFFILIATED COMPANIES to use the licensed CREWMEISTER PRODUCTS in accordance with the provisions of the respective CONTRACT. Since in such a case personal data of AFFILIATED COMPANIES of the CUSTOMER are also processed by CREWMEISTER, this DPA shall apply to the following scenarios:

- The CUSTOMER is the sole controller with regard to the personal data made available to CREWMEISTER for the data processing.
- Besides the CUSTOMER, its AFFILIATED COMPANIES also use the licensed CREWMEISTER PRODUCTS; the CUSTOMER and its AFFILIATED COMPANIES are each the sole or joint controller.

- The CUSTOMER is the controller with respect to its own personal data and the processor with respect to the personal data of its AFFILIATED COMPANIES. From the point of view of its AFFILIATED COMPANIES, CREWMEISTER is a sub-processor of the CUSTOMER.
- The CUSTOMER is only a processor of its AFFILIATED COMPANIES and CREWMEISTER is a sub-processor with regard to the personal data.

Notwithstanding the above-listed scenarios, the CUSTOMER shall always be the central and direct operational contact for CREWMEISTER under this DPA.

Insofar as CREWMEISTER processes personal data in this context, the conditions of this DPA shall apply.

For the provision of the CREWMEISTER PRODUCTS in accordance with the CONTRACT the use of sub processors is required. In this respect, the CUSTOMER is aware that CREWMEISTER cannot provide the CREWMEISTER PRODUCTS without sub processors. The use of sub processors shall be governed by § 6 of this DPA.

Note on gender neutrality: The selected formulations apply without restriction to the other genders.

§ 1 Subject matter of this DPA

1. Legal basis: The purpose of this DPA is to ensure compliance with Art. 28 (3) and (4) of the GDPR.

Unless expressly defined otherwise within the framework of this DPA, the terms used such as "personal data", "processing", "controller" or "pseudonymization" shall have the same meaning as in Art. 4 GDPR. In all other respects, the definition of the CONTRACT shall apply to this DPA.

This DPA shall be read and interpreted in the light of the provisions of the GDPR. This DPA shall not be interpreted in a way that runs counter to the rights and obligations provided for in the GDPR or in a way that prejudices the fundamental rights or freedoms of the data subjects.

2. Duties of the CUSTOMER: In order to comply with the GDPR, the CUSTOMER shall in particular ensure the lawfulness of the transmission of data of the CUSTOMER and / or its AFFILIATED COMPANIES to CREWMEISTER as the case may be, the lawfulness of the processing of personal data in the context of the use of the CREWMEISTER PRODUCTS as well as the protection of the rights of the data subjects whose data are processed in the context of the use of the CREWMEISTER PRODUCTS.

§ 2 Description of the processing

The specific scope of services shall be agreed by the PARTIES in the CONTRACT. The services under consideration regularly include matters in the sense of data processing of personal data. This shall apply accordingly to (remote) testing and (remote) maintenance of automated processes or the use of data processing systems, insofar as access to personal data of the CUSTOMER cannot be excluded in the process.

The details of the relevant processing operations, in particular the categories of personal data and the purposes for which the personal data are processed on behalf of the CUSTOMER, are specified in **DPA-Exhibit I - Description of the processing**.

§ 3 Technical and organizational measures

1. Ensuring data security: CREWMEISTER must observe the principles of proper data processing and monitor their compliance (see Art. 5 GDPR). CREWMEISTER ensures that it complies with the provisions of Art. 28 (3) lit. c), 32 GDPR. To this end, CREWMEISTER has taken appropriate measures to ensure data security and, while continuing to make any necessary adjustments, ensure a level of protection appropriate to the risk regarding the confidentiality, integrity, availability and resilience of the systems. To determine the appropriate level of protection, particular account shall be taken of the risks associated with data processing, in particular destruction, loss or alteration,

whether accidental or unlawful, or unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed. This takes into account the state of the art, implementation costs and the nature, scope and purpose of the processing, as well as the varying likelihood and severity of the risk to the rights and freedoms of natural persons.

2. Documentation and submission of measures: CREWMEISTER shall at least implement the technical and organizational measures specified in **DPA-Exhibit II - Technical and organizational measures** to ensure the security of the personal data.
3. Current state of the art and technical adaptations: The technical and organizational measures are subject to technical progress and continuous development. As a result, CREWMEISTER is permitted to implement alternative adequate measures. In doing so, the level of security provided by the measures specified in this DPA must at a minimum be maintained. Material changes to the technical and organizational measures must be documented and communicated to the CUSTOMER in an appropriate manner, e.g., through e-mail or via an online portal which is accessible via the CREWMEISTER website. By providing this information, CREWMEISTER gives the CUSTOMER the opportunity to object to these changes in writing or text form within six (6) weeks. The CUSTOMER shall only be entitled to object if the changes do not meet the requirements of § 3 clause 1 and § 3 clause 2 of this DPA. If the CUSTOMER does not or not justified object to the changes within the objection period, the approval of the changes shall be deemed to have been given after the deadline. In the event of a justified objection, CREWMEISTER may suspend the part of the service provision which is affected by the CUSTOMER's justified objection.

§ 4 Authority to issue instructions

1. Documented instruction: CREWMEISTER shall process personal data of the CUSTOMER only in accordance with documented instructions of the CUSTOMER, unless CREWMEISTER is legally obligated to process such personal data or is contractually entitled to do so in accordance with this DPA. The CONTRACT including this DPA constitutes a documented instruction of the CUSTOMER.
2. Certainty and form of instructions: Unless otherwise expressly agreed in this DPA, instructions shall be given in a clear manner (requirement of clarity of instructions). Instructions must be issued in writing or in text form.
3. Feasibility of the instruction: CREWMEISTER shall review the feasibility of an instruction within a reasonable period of time at the expense of the CUSTOMER and notify the CUSTOMER of the result of the review in text form. Instructions of the CUSTOMER which represent a deviation from the services stipulated in the CONTRACT or this DPA shall be treated as a change request of the CONTRACT. The contractual obligations under the CONTRACT shall remain unaffected during the period of review.

Instructions confirmed by CREWMEISTER shall be implemented by joint agreement of the PARTIES within a reasonable period of time. If CREWMEISTER incurs additional expenses for the implementation of the instruction, these shall be remunerated by the CUSTOMER. CREWMEISTER shall make reasonable efforts to implement instructions of the CUSTOMER which are to be qualified as a change request of the CONTRACT, insofar as they are required in particular under data protection law and are technically possible or do not require any changes to the CREWMEISTER PRODUCTS. If one of the aforementioned exceptions applies, CREWMEISTER shall inform the CUSTOMER thereof in text form. In the event that no agreement of the change request can be reached, the obligations under the CONTRACT shall remain in force.

4. Notification of illegality: CREWMEISTER shall immediately notify the CUSTOMER if CREWMEISTER believes that an instruction is unlawful. This notification does not contain a comprehensive legal analysis. CREWMEISTER is entitled to suspend the execu-

tion of the corresponding instruction until it has been confirmed or changed by the CUSTOMER.

5. Rights of data subjects: CREWMEISTER may only provide information to data subjects affected by processing on behalf or to third parties following prior instruction by CUSTOMER. Insofar as a data subject directly contacts CREWMEISTER in this regard, CREWMEISTER shall immediately forward this request to the CUSTOMER.
6. Regress: In the event that CREWMEISTER incurs a justified claim for liability as a result of the performance of an unlawful instruction, it shall have the right to indemnity from CUSTOMER in this respect.

§ 5 Obligation to maintain confidentiality

1. Data and telecommunications secrecy: CREWMEISTER and each person subordinate to CREWMEISTER who has access to personal data are obligated to maintain confidentiality, in particular in accordance with the provisions of Art. 5 (1) lit. f), Art. 28 (3) lit. b), Art. 29, Art. 32 (4) GDPR and § 3 TTDSG. The obligation to maintain confidentiality continues even after the termination of this DPA.
2. Instruction of all persons deployed for processing on behalf: CREWMEISTER shall take appropriate measures such as, in particular, regular training in data protection, to ensure that persons under its authority who are authorized to process personal data are familiar with the relevant provisions on data and telecommunications secrecy.

§ 6 Commissioning of sub processors

1. Definition of sub processor: For the purposes of this regulation, subcontracting relationships are those services that directly relate to the provision of the main service as agreed the CONTRACT. This does not include generally occurring ancillary services in CREWMEISTER's daily business operation that CREWMEISTER uses, for example telecommunication services, postal/transport services, maintenance and user services or the disposal of documents and data media, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing systems of internal business operation. Nevertheless, to also ensure the privacy and security of the data of the CUSTOMER for such outsourced services, CREWMEISTER is obligated to effect appropriate and legally compliant contractual agreements and control measures.
2. Prerequisites for the legitimacy of the commissioning: The commissioning of sub processors is only possible with the CUSTOMER's consent.
 - a) General requirements: Where CREWMEISTER engages a sub processor for carrying out specific processing activities (on behalf of the CUSTOMER), CREWMEISTER shall do so by way of a contract which imposes on the sub processor, in substance, the same data protection obligations as the ones imposed on CREWMEISTER in accordance with this DPA. CREWMEISTER shall ensure that the sub processor complies with the obligations to which CREWMEISTER is subject pursuant to this DPA and to the GDPR. At the CUSTOMER's request, CREWMEISTER shall provide a copy of such a sub processor agreement and any subsequent amendments to the CUSTOMER. To the extent necessary to protect business secret or other confidential information, including personal data, CREWMEISTER may redact the text of the agreement prior to sharing the copy.
 - b) Sub processors in third countries: Any transfer of data to a third country or an international organization by CREWMEISTER shall be done only on the basis of documented instructions from the CUSTOMER (cf. § 4) or in order to fulfil a specific requirement under Union or Member State law to which CREWMEISTER is subject and shall take place in compliance with Chapter V of the GDPR.

The CUSTOMER agrees that where CREWMEISTER engages a sub processor in accordance with this § 6 for carrying out specific processing activities (on behalf of the CUSTOMER) and those processing activities involve a transfer of personal data within the meaning of Chapter V of the GDPR, CREWMEISTER and the sub processor can ensure compliance with Chapter V of the GDPR by using standard contractual clauses adopted by the Commission in accordance with of Article 46 (2) of the GDPR, provided the conditions for the use of those standard contractual clauses are met.

3. Current sub processors: CREWMEISTER has the CUSTOMER's general authorization for the engagement of sub processors in **DPA-Exhibit III - List of authorized sub processors** to this DPA. With regard to the use of such sub processors the consent of the CUSTOMER shall be deemed to have been granted upon conclusion of this DPA.
4. Further sub processors: Further outsourcing to sub processors or the change of existing sub-processors is permissible under the conditions of § 6 (2) of this DPA even without the explicit consent of the CUSTOMER, providing that CREWMEISTER notifies the CUSTOMER of the outsourcing to (other) sub processors with reasonable advance notice (e.g., through e-mail or via an online portal which is accessible via the CREWMEISTER website) and the following regulations are fulfilled:

CREWMEISTER shall provide the CUSTOMER with an updated list listing all sub processors processing the CUSTOMER's personal data and the ancillary services provided by them. By providing this information, CREWMEISTER gives the CUSTOMER the opportunity to object to these changes within six (6) weeks. The CUSTOMER shall only be entitled to object if the changes do not meet the requirements of § 6 clause 2 of this DPA. If the CUSTOMER does not or not justified object to the changes in writing or text form within the objection period, the approval of the changes shall be deemed to have been given after the deadline. In the event of a justified objection, CREWMEISTER may suspend the part of the service provision which is affected by the CUSTOMER's justified objection. In the event that the CUSTOMER objects to the use even after consultation with CREWMEISTER, CREWMEISTER may choose whether it does not commission the sub processor or terminates the CONTRACT in writing with a notice period of two (2) months. This provision supplements the termination provision in the CONTRACT.

5. Validity of the provisions of this DPA also for sub processors: At the request of the CUSTOMER, CREWMEISTER shall provide the CUSTOMER with information on relevant data protection obligations undertaken by the sub processor, including, but not limited to, granting the necessary access to the relevant contractual documents. CREWMEISTER shall regularly inspect its sub processors and shall, at the CUSTOMER's request, confirm compliance with data protection law and the sub processor's obligations under the contract concluded with it. The CUSTOMER shall only be entitled to issue instructions to CREWMEISTER to carry out further tests, which CREWMEISTER will carry out within the scope of what is permissible, if there are justified reasons for doing so.

§ 7 CUSTOMER's obligations and rights; CREWMEISTER's support of the CUSTOMER

To protect the rights of the data subject (Art. 12 et seq. GDPR and Sections 32 et seq. BDSG), the CUSTOMER is obligated to undertake technical and organizational measures, report and communicate data breaches, cooperate with the regulatory authority (Art. 32 to 36 GDPR), and implement quality assurance (Art. 28 (1) GDPR). CREWMEISTER shall support the CUSTOMER in observing these obligations. In this context, CREWMEISTER shall provide the CUSTOMER with all information, insofar as the latter does not possess said information. CREWMEISTER is not obligated to obtain information, which it does not possess for the purpose of providing support. CREWMEISTER shall support the CUSTOMER as follows:

1. Protection of the rights of data subjects: The CUSTOMER is obligated to protect the rights of data subjects. If necessary, CREWMEISTER shall assist the CUSTOMER in the event that data subjects assert their rights.

2. Technical and organizational measures: CREWMEISTER shall assist the CUSTOMER in ensuring an adequate level of protection by way of technical and organizational measures which take into account the circumstances and purposes of the processing as well as the predicted likelihood and severity of a possible infringement of rights resulting from security vulnerabilities, as well as enable prompt detection of relevant infringement events. In this context, the CUSTOMER shall ensure that the CREWMEISTER PRODUCTS provided by CREWMEISTER, and the associated technical interfaces are protected against unauthorized access, in particular in a suitable and protective manner (e.g., by granting only temporarily valid access IDs and/or regular password changes and/or by restricting the authorized IP address range, or other comparable measures).
3. Duty to report and duty to communicate: In the event of CREWMEISTER 's breach of the protection of personal data, CREWMEISTER is obligated to support the CUSTOMER with regard to the latter's reporting obligation vis-a-vis the competent regulatory authority duty to notify the data subjects. In the event of a serious operational interruption, suspected breaches of data protection, or violations of this DPA, whether caused by the CUSTOMER, a third party or CREWMEISTER, CREWMEISTER shall immediately and fully inform the CUSTOMER of the time, nature and extent of the personal data concerned. The CUSTOMER shall immediately be provided with all relevant information required to fulfill the obligation to report vis-a-vis the regulatory authority.
4. Cooperation with regulatory authorities: The PARTIES shall cooperate with the competent regulatory authority in the performance of their duties as necessary and in accordance with the following principles.
 - a) Monitoring procedures carried out on the premises of CREWMEISTER or the CUSTOMER:
 - (aa) CREWMEISTER shall inform the CUSTOMER without delay of monitoring procedures and measures taken by the supervisory authority insofar as they relate to the CONTRACT. This also applies if a competent authority investigates as part of administrative or criminal proceedings with regard to personal data processing by CREWMEISTER.
 - (bb) Insofar as the CUSTOMER is subject to monitoring by the supervisory authority, administrative offence or criminal proceedings, the liability claim of a data subject or third party or any other claim in connection with personal data processing by CREWMEISTER, CREWMEISTER is obligated to support the CUSTOMER to the best of its ability.
 - b) Data protection impact assessment: Insofar as the CUSTOMER itself has a legal obligation to compile a data protection impact assessment, CREWMEISTER shall assist it in carrying out the data protection impact assessment and with any necessary prior consultation with the regulatory authority. This includes in particular the transmission of any required information or the disclosure of any required documents upon the associated request by the CUSTOMER.
5. Documentation and compliance:
 - a) Audits: The PARTIES shall be able to demonstrate compliance with this DPA. CREWMEISTER shall deal promptly and adequately with inquiries from the CUSTOMER about the processing of data in accordance with this DPA. CREWMEISTER shall make available to the CUSTOMER all information necessary to demonstrate compliance with the obligations that are set out in this DPA and stem directly from GDPR. At the CUSTOMER's request, CREWMEISTER shall also permit and contribute to audits of the processing activities covered by this DPA, at reasonable intervals or if there are indications of non-compliance. In deciding on an audit, CUSTOMER may take into account relevant information and certifications held by CREWMEISTER.

The CUSTOMER may choose to conduct the audit by itself or mandate an independent auditor. CREWMEISTER may object to the inspection by an independent auditor if the

auditor selected by the CUSTOMER is in a competitive relationship with CREWMEIS-TER or has not been obliged to observe confidentiality.

The costs of audits pursuant to § 7 (5) lit. a) shall be borne by the CUSTOMER.

- b) Documentation: In particular, proof of documentation of technical and organizational measures can be provided by way of compliance with approved codes of conduct pursuant to Art. 40 GDPR or suitable certification by means of an IT security or data protection audit.
- c) Data protection officer: The contact details of the data protection officer of CREWMEIS-TER are listed in **DPA-Exhibit II - Technical and organizational measures**.

§ 8 Deletion or return following conclusion of processing

1. Deletion or return: The deletion and return of personal data is governed by the provisions in **DPA-Exhibit I - Description of processing** and the contractual provisions.
2. [intentionally left blank].
3. Retention periods: Documentation which serves as evidence of orderly and proper data processing must be retained by CREWMEISTER in accordance with the applicable statutory retention periods beyond the end of this DPA. To relieve itself of this obligation, CREWMEISTER may turn said documentation over to the CUSTOMER at the end of this DPA.
4. Costs: Additional costs incurred as a result of CUSTOMER instructions which deviate from, or which exceed the scope of this § 8 (1) shall be borne by the CUSTOMER.

§ 9 Liability

1. External liability: The CUSTOMER and CREWMEISTER shall each be liable for damages to persons affected in accordance with Art. 82 GDPR (external liability).
2. Internal liability: Each PARTY shall be entitled to recover from the other PARTY that part of the compensation which corresponds to the other PARTY'S share of responsibility for the damage (internal liability).
3. Liability agreement: With regard to internal liability - and without prejudice to external liability towards the data subjects - the PARTIES agree that, notwithstanding the provisions contained herein, CREWMEISTER's liability for breach of this DPA shall be subject to the limitations of liability agreed in the CONTRACT. The CUSTOMER shall indemnify CREWMEISTER against all claims and damages which go beyond the liability limitations of the CONTRACT, insofar as CREWMEISTER has suffered these in connection with claims of the data subjects due to an alleged violation of provisions of the GDPR or this DPA.

§ 10 Final provisions

1. Replacement clause; changes and additions:
 - a) This DPA shall enter into force upon conclusion of the CONTRACT and once entered into force in its area of application, shall supersede any potentially existing agreements between the PARTIES for processing (data) on behalf.
 - b) Unless explicitly agreed otherwise, all changes and additions to this DPA, as well as all ancillary agreements, must be in written or text form to be effective.
 - c) Notwithstanding the provisions in § 3 clause 3 (Current state of the art and technical adaptations) as well as § 6 clause 4 (Further sub processors), CREWMEISTER shall be entitled to amend or supplement the provisions of this DPA insofar as this does not negatively affect the equivalence relationship agreed upon was concluded with regard to essential elements of the DPA and the amendments are reasonable for the CUSTOMER. The right to amend the DPA in particular shall include changes with regard to (i) technical developments, (ii) changes in the legal framework, (iii) adaptations of the regulations on the handling of personal data, (iv) the elimination of an equivalence disruption that has arisen subsequently or (v) the elimination of regulatory gaps (e.g., in the event of unforeseeable, changed circumstances). CREWMEISTER will inform the CUSTOMER of the planned amendments in advance. The amendments shall be deemed to have been accepted by the CUSTOMER if it does not object to CREWMEISTER in writing or text form within six (6) weeks after notification. In the amendment notice CREWMEISTER shall also draw the CUSTOMER's attention to the intended significance of its conduct.
2. Non-applicability of the CUSTOMER's terms and conditions/general conditions of purchase: It is agreed by the PARTIES that the CUSTOMER's "terms and conditions" and/or "general conditions of purchase" of the CUSTOMER do not apply to this DPA.

3. Exclusion of Section 273 German Civil Code [BGB]: Objection based on the right of retention according to Section 273 BGB is excluded regarding the processed personal data and the associated data media.
4. [intentionally left blank]
5. Obligation to provide information in the event of endangerment of processed personal data: In the event of the endangerment of the processed data at CREWMEISTER due to attachment or confiscation, insolvency or settlement proceedings, or other events or third-party actions, CREWMEISTER is obligated to inform the CUSTOMER without undue delay.
6. Place of jurisdiction: The provisions of § 10 clause 7 of this DPA shall apply.
7. Choice of law and place of jurisdiction: The applicable data protection provisions shall apply to legal remedies of a data subject against CREWMEISTER as a processor. For legal remedies of the PARTIES arising from or in connection with this DPA, the provisions of the CONTRACT shall apply with regard to the choice of law and the place of jurisdiction.
8. Severability: Should individual parts of this DPA be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions. The PARTIES agree to replace the invalid or unenforceable provision with an effective and enforceable provision that comes as close as possible to the originally intended purpose of the ineffective or unenforceable provision. This applies accordingly in the event of a regulatory gap or omission.