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Terms of Service

Posted: January 20, 2019

Effective: January 20, 2019

These Terms of Service set forth the terms and conditions that govern Customer's access to and use of SkyMaker's service called DynaMaker (the "Service") offered on the domain dynamaker.com (the "Website").

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING "ACCEPTED AND AGREED TO", CUSTOMER AGREES TO THESE TERMS OF SERVICE.

These Terms of Service constitute an agreement (the "Agreement") by and between SkyMaker AB ("SkyMaker", "we", "us" or "our") and the organization, corporation, limited company or other business entity placing an order for or accessing the Service ("Customer" or "you"). The Agreement consists of the Terms of Service set forth below (including our Acceptable Use Policy), our Privacy Policy and any applicable Order (as defined below). If you are accessing or using the Service for an organization, you represent that you are authorized to accept this Agreement on behalf of that organization and to bind such organization to these terms and conditions, and all references to "you" or "Customer" reference the organization. Customer acknowledges and agrees that the person who executes this Agreement on its behalf has been authorized to do so and that he or she has the authority to bind Customer and its Users to this Agreement.

The Agreement is effective as of the date Customer creates a user account ("Account") and clicks "Accepted and Agreed To", or as of the date Customer accesses or uses the Service without creating an Account (the "Effective Date").

Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms.

IF CUSTOMER DOES NOT AGREE WITH (OR CANNOT COMPLY WITH) THE AGREEMENT, THEN CUSTOMER MAY NOT USE THE SERVICE.

If you have any questions regarding the Service or the Agreement, please contact SkyMaker customer support by visiting www.dynamaker.com/support.

1. DEFINITIONS

- 1.1 The following capitalized terms will have the following meaning whenever used in this Agreement.
- 1.2 "Documentation" means SkyMaker's standard manual related to the Service and use thereof, help windows and readme files for the Service.
- 1.3 "Order" means the SkyMaker-approved service ordering form or online subscription process by which Customer agrees to subscribe to the Service.
- 1.4 "Privacy Policy" means SkyMaker's privacy policy, currently posted at www.dynamaker.com/legal.
- 1.5 "Service Specifications" means the documents listed at www.dynamaker.com/service-specification/, as applicable to the Service under Customer's Subscription.

- 1.6 "Software" means SkyMaker's software provided to Customer by or on behalf of SkyMaker in connection with Customer's use of the Service.
- 1.7 "User" means any individual who uses the Service on Customer's behalf or through Customer's Account or passwords, whether authorized or not.

2. TERM

The term of this Agreement (the "Term") begins on the Effective Date (as described in the preamble above) and continues for as long as Customer or User has an Account or until Customer chooses to terminate its Account, or SkyMaker terminates Customer's access to the Service in accordance with the Agreement.

3. THE SERVICE

- 3.1 Service Overview. The Service is a cloud service for creating, deploying and maintaining mass customization tools, allowing Customers to set up their own projects ("Project") and enable an automated workflow for their custom orders. The result of the Service is product specific online tools for automating the flow of B2B custom orders that can be integrated with Customer's e-commerce or customer portals.
- 3.2 Projects. The customer or User can create multiple projects in the Service. Every Project has a public part that becomes available at the point or points at which SkyMaker connects the Service to a public electronic communications network (the "Access Point") when User or Customer deploys a specific version of a Project to the Access Point. Customer understands and agrees that any Project, including Customer Content integrated in such Project, that it deploys will become publicly available at the Access Point.

When starting a new Project, Customer or User will choose whether to it is a Private Project or an Open Project. A "Private Project" is a project that may only be used by Customer and that Customer thus receives an exclusive license to. An "Open Project" is a project that Customer allows SkyMaker to make available in the Service for use by all customers and users. In the latter case Customer receives a non-exclusive license. The terms and conditions of the licenses mentioned above are stated in section 6 below.

- 3.3 Provision of the Service. During the Term, SkyMaker undertakes to provide access to the Service at the Access Point in accordance with the terms and conditions of the Agreement. The Service shall be provided in a professional manner. Unless otherwise follows from the Agreement and subject to SkyMaker's Privacy Policy, SkyMaker has the right to provide the Service, in whole or in part, from another country, provided that SkyMaker fulfills the terms and conditions of the Agreement.

4. CHANGES TO THE AGREEMENT

SkyMaker may make changes to the Agreement from time to time by making a new copy of the Agreement available on the Website and within the Service. If SkyMaker makes material changes to the Agreement SkyMaker will notify Customer thereof by displaying a prominent notice within the Service and by sending Customer an email. Such material changes will be deemed accepted and become effective 30 days after such notice. In case of material changes to the Agreement, Customer has the right to terminate the Agreement by written notice to SkyMaker no later than 14 days before the effective date of the amendment. Please note that any continued use of the Service after the changes have become effective will constitute your acceptance of the changes. Notwithstanding the foregoing provisions of this Section 4, SkyMaker may revise the Privacy Policy and Acceptable Use Policy at any time

by posting a new version of either at the Website. Such new version will become effective on the date it is posted.

5. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS, ACCEPTABLE USE

- 5.1 Access. Customer is responsible for the communication between Customer and the Access Point. Customer is also responsible for third party programs such as web browsers, pdf readers, toolbars, anti-virus and firewalls being correctly installed and that they allow traffic to web sites designated by SkyMaker. Customer shall ensure that the web browser is kept up to date with the latest version.
- 5.2 Acceptable Use. Customer and its Users shall comply with SkyMaker's acceptable use policy, currently posted at www.dynamaker.com/legal (the "Acceptable Use Policy"). Customer shall not, and shall not cause or permit others to:
- a) Provide Service passwords or other login information to any third party or in any other way allow third parties to exploit the Service;
 - b) Share non-public Service features or content with any third party;
 - c) Use the source code from individual service features outside the service
 - d) Access the Service in order to build a competitive product or service, to build a product or service using similar ideas, features, functions, source code or graphics of the Service, or to copy any ideas, features, functions or graphics of the Service;
 - e) Disassemble, decompile, reverse engineer or otherwise try to discover the source code of the Software, or to create derivative works, compilations, or collective works thereof;
 - f) Remove or alter any copyright or other proprietary notice or legends appearing in the Service, Software or Documentation;
 - g) Perform or disclose any benchmarking or availability testing of the Service; or
 - h) Perform or disclose any performance or vulnerability testing of the Service without SkyMaker's prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Service.
- 5.3 Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the Service, including without limitation by protecting its passwords and other log-in information. Customer shall notify SkyMaker immediately of any known or suspected unauthorized use of the Service or breach of its security and shall use best efforts to stop said breach.
- 5.4 Compliance with Laws. In its use of the Service Customer shall comply with all applicable laws, including without limitation laws governing intellectual property, trade secrets and the protection of personal data.
- 5.5 Users & Service Access. Customer is responsible and liable for: (a) User's use of the Service, including without limitation unauthorized User conduct and any User conduct that would violate the Acceptable Use Policy or requirements of this Agreement applicable to Customer; and (b) any use of the Service through Customer's Account, whether authorized or unauthorized.
- 5.6 Retrieval of Customer Content. At the end of the Term, SkyMaker will make Customer Content (as it existed at the end of the Term) available for retrieval by Customer during a retrieval period of 30 days. Customer is responsible for retrieving any Customer Content that it may need in the future during that period. At the end of the retrieval period SkyMaker has the right to delete or otherwise render unrecoverable any Customer Content that remains in the Service.

6. CUSTOMER CONTENT

- 6.1 Customer retains ownership of any intellectual property rights that Customer holds in its Customer Content. Customer represents and warrants that it either is the owner of or has permission to use all of its Customer Content.
- 6.2 In this Agreement, "Customer Content" means Customer's or, as applicable, its User's models, designs, files, images, documents, data sets, scripts, codes, information, data or similar material submitted or transmitted to or stored or otherwise used in connection with the Service by such Customer or User.
- 6.3 Customer has the sole responsibility for its Customer Content or other data submitted to the Service by Customer or User. Customer is responsible for the accuracy of Customer Content and for ensuring that Customer Content is free from viruses, Trojans, worms or other malicious software or code and that Customer's Content otherwise cannot damage or interfere with the Service.
- 6.4 Customer is liable for and shall indemnify and hold SkyMaker harmless from and against any infringement by Customer Content of any third party right or any other non-compliance with applicable law. Customer shall notify SkyMaker immediately upon discovery of any infringements or attempted infringements that may affect the Service.

7. OWNERSHIP AND RIGHT TO USE

- 7.1 Ownership to the Service. SkyMaker retains all right, title, and interest in and to the Service and Projects (both Private and Open Projects) generated by Customer through the Service, including without limitation all software used to provide the Service. This Agreement does not grant Customer any intellectual property rights in or to the Service or any of its components or Documentation other than a limited right to use the Service in accordance herewith.
- 7.2 Right to use the Service. During the Term, Customer may access and use the Service described in the Service Specification pursuant to the terms of its subscription and the Agreement. Customer may allow its Users and contractors to access and use the Service on behalf of Customer and is responsible for its User's and contractor's compliance with the Agreement.
- 7.3 Customers use of Projects. Customer is hereby granted, for the term of the Agreement and for use in the Service,:
 - i) a worldwide, non-transferable, non-sublicensable, exclusive license to Private Projects
 - ii) a worldwide, non-transferable, non-sublicensable, non-exclusive license to Open Projects

Customer recognizes that it may not move or otherwise use a Project outside of the Service.

- 7.4 SkyMaker's use of Projects: SkyMaker may use Customer's Projects for the purpose of providing, maintaining, securing, developing or modifying the Service. Customer understands and agrees that SkyMaker may use Open Projects for the purpose of using or incorporating such Open Projects in SkyMaker's products, services, advertising and marketing materials, and for developing and marketing new products and services.

Customer also accepts and agrees that when Customer deploys an Open Project, SkyMaker has the right to make it available in the Service for use by all customers and users of the Service, including any Customer Content integrated in such Open Project. Such other

customer and users may then freely use and modify the Open Project in the Service in accordance with DynaMaker Open Project License 1.0 currently posted at www.dynamaker.com/legal.

SkyMaker shall not grant any other customer or user of the Service or other third-party access to Customer's Private Projects, except subcontractors that have entered into a nondisclosure agreement with SkyMaker.

- 7.5 **SkyMaker's use of Customer Content.** When uploading Customer Content, Customer gives SkyMaker a worldwide license to access, process or otherwise use Customer Content (including any personal data therein) for statistical purposes and for providing, maintaining, securing, supporting, improving and developing the Service and for clarifying misuse or analyzing infringements.

When deploying a Project, Customer gives SkyMaker a worldwide license to publicly publish and display Customer Content (including any personal data therein) included in the public part of that Project at the Access Point.

- 7.6 **Feedback.** Any ideas or suggestions for improving or otherwise modifying the Service and/or any other feedback that Customer or Users provide to SkyMaker as well as any Customer or User behaviors in relation to the Service (together "Feedback") may be freely used, exploited and profited from by SkyMaker for any purpose and in any manner without compensation to Customer or User. Customer hereby assigns to SkyMaker all right, title and interest to Feedback provided to SkyMaker.

8. RESTRICTED OR SUSPENDED ACCESS TO THE SERVICE

- 8.1 If the provision of the Service results in a risk of more than insignificant damage to SkyMaker or another customer of the Service, SkyMaker may block or restrict access to the Service.
- 8.2 If SkyMaker reasonably suspects any breach of this Agreement (including by repeated minor breaches) and, in particular, the requirements of Section 5, by Customer or its Users, SkyMaker may suspend Customer's and/or User's access to the Service without advance notice, in addition to such other remedies as SkyMaker may have. If SkyMaker exercises this right, it shall notify Customer or User, as applicable.

9. SUBSCRIPTIONS

- 9.1 **Subscriptions.** SkyMaker may offer different subscription plans with differing conditions and limitations as stated on the Website. The conditions applicable to Customer's subscription will be disclosed in the Order at the time Customer signs up for the Service.
- 9.2 **Subscription period.** A subscription runs on a monthly basis and corresponds to the payment period for the Service (the "Subscription Period"). The Subscription Period will renew automatically for successive one-month periods, unless Customer terminates its subscription or gives SkyMaker written notice at least 14 or more days before the renewal date, or unless SkyMaker suspends Customer's access to the Service in accordance with the Agreement or terminates the Agreement.
- 9.3 **Promotional Offers.** SkyMaker may provide or sell promotional codes or promotional subscription plans from time to time for access to a subscription to the Service ("Code"). Separate terms and conditions may apply to the Service when accessed with a Code and will be presented at the time Customer receives or purchases a Code. By accessing the Service through a Code, Customer agrees to comply with any such terms and conditions.

10. FEES AND PAYMENT

- 10.1 Subscription Fees. Customer shall pay SkyMaker the subscription fee applicable to the subscription plan elected by Customer as stated on the Website (the "Subscription Fee").
- 10.2 Other Fees. Customer may order additional pay-per-use services from within its Account (the "Pay-Per-Use Services") subject to the prices listed in connection therewith.
- 10.3 Payment. When subscribing to a subscription plan or accessing the Service through a Code, Customer receives access to the Service immediately. Customer shall provide a valid accepted payment method as stated on the Website at the time of subscribing. The Subscription Fee shall be paid monthly at the beginning of each Subscription Period and by starting a subscription to the Service and providing a valid payment method, Customer authorizes SkyMaker to charge Customer the Subscription fee to Customer's payment method. The fees for Pay-Per-Use Services are based on usage and will be charged to Customer's payment method at the time of the order of such services.
- 10.4 Price Changes. SkyMaker is entitled to raise the Subscription Fee and fees for Pay-Per-Use Services immediately (a) if the increase is directly attributable to external factors such as changes in exchange rates, taxes or other similar charge, and (b) in case of other similar changes or circumstances of economic importance outside SkyMaker's control and which affect the cost for providing the Service. SkyMaker also reserves the right to adjust the Subscription Fee and fees for Pay-Per-Use Services from time to time as it sees fit. In such case, SkyMaker shall notify Customer of the adjustment no later than 30 days before the effective date of thereof. If Customer refuses such price adjustment, Customer is entitled to terminate the Agreement by 30 days written notice.
- 10.5 Late Payment. In the event of late payment, SkyMaker is entitled to penalty interest pursuant to the Interest Act.
- 10.6 Taxes. Customer is responsible for paying all applicable sales, value-added or other taxes and all duties levied or imposed by any government authority by reason of Customer's paid use of the Service under this Agreement, except for taxes based on Vendor's net income.

11. SECURITY

- 11.1 SkyMaker's Responsibilities. SkyMaker applies a number of security measures to ensure the functionality of the Service and safekeeping of Customer's Content. SkyMaker shall comply with its internal security regulations available on www.dynamaker.com/security or such other place as SkyMaker designates. SkyMaker reserves the right to make changes to its security regulations, subject to the terms regarding changes to the Agreement in Section 3.
- 11.2 Customer's Responsibilities. The Service and Projects are not intended as tools for final design validation before manufacturing. All Projects, as well as all results generated by Projects, must be validated by Customer before production and all produced goods (custom or standard) must be tested for safety and correctness before shipping to end customer or end user.

12. PERSONAL DATA

- 12.1 SkyMaker will comply with the SkyMaker Privacy Policy applicable to the Service and applicable data protection laws.
- 12.2 Customer is the data controller of all personal data processed by or on behalf of Customer within the scope of the Service. As data controller it is the responsibility of Customer that

personal data is processed in accordance with applicable legislation. Customer undertakes to:

- (a) Ensure that there is a legal ground for the processing of personal data by or on behalf of Customer;
- (b) Ensure that the data subjects, as required by applicable law, has received sufficient information regarding the processing, including information that SkyMaker may process the personal data on behalf of Customer; and
- (c) Act as the data subjects point of contact.

12.3 To the extent that Projects include personal data, SkyMaker, as data processor, undertakes to process such personal data only in accordance with the Agreement and Customer's written instructions. In case Customer's instructions require other measures by SkyMaker than those following from the Agreement, including SkyMaker's assistance in handling data subject requests, SkyMaker shall be entitled to compensation for such surplus work on a time and material basis.

12.4 SkyMaker is entitled to engage subcontractors acting as sub-processors of the personal data, provided that such subcontractor is bound by a written contract according to which it, as data processor, undertakes to adhere to the same data protection obligations of this Section 12 as SkyMaker. Customer may receive information on current sub-processors engaged by SkyMaker by contacting SkyMaker customer support.

12.5 When providing the Service, SkyMaker is entitled to process personal data of Customer in a country outside the EU/EEA, provided that SkyMaker ensures that the sub-processor signs the EU's standard agreement clauses for the transfer of personal data to third countries.

13. CONFIDENTIALITY

13.1 SkyMaker undertakes not to disclose Confidential Information of Customer to any third party without Customer's consent, during the Term and for a period of three (3) years thereafter. SkyMaker will protect Customer's Confidential Information in accordance with SkyMaker's internal security regulations.

13.2 Customer's Content residing in the Service, whether created by Customer or a User on behalf of a Customer, shall be considered the confidential information of Customer ("Confidential Information"). Customer's Confidential Information shall not include information that (a) prior to the time of disclosure was publicly known; (b) after disclosure by Customer becomes publicly known through no act or omission by SkyMaker; (c) was already known to SkyMaker, or otherwise lawfully in SkyMaker's possession at the time of disclosure by Customer; (d) is rightfully obtained by SkyMaker from a third party without restrictions in respect of disclosures or use; (e) is at any time developed by SkyMaker independent of and without reference to Confidential Information; or (f) must be disclosed by requirement of mandatory law, court or government order or applicable, binding stock exchange regulations.

14. CUSTOMER SUPPORT

SkyMaker provides email support for queries regarding the functionality of the Service. Response time for support queries may vary between different subscription plans. The response time applicable to Customer may be located within Customer's Account. Queries regarding setting-up or administration of configurators, updates of database content and the like and correction due to improper use of the Service is not included in the customer support.

15. MAINTENANCE AND SERVICE LIMITATIONS

- 15.1 Maintenance. During the Term, SkyMaker shall maintain the Service according to its internal maintenance plan and to the extent SkyMaker finds it appropriate for the Service.
- 15.2 Availability. SkyMaker will make commercially reasonable efforts to provide continuous access to the Service at the Access Point and to keep the Service operational. However, Customer's access to, and use of, the Service may be suspended temporarily for the duration of any scheduled maintenance or unscheduled downtime or unavailability of the Service for any reason outside SkyMaker's control, including because of power outages, system or Internet failures, or other interruptions. Customer understands and agrees that the Service is dependent upon the Internet and that any interruptions, time-lags, bugs and similar impediments between the Service and Customer or User do not constitute faults in the Service.
- 15.3 Service Revisions. SkyMaker is responsible for development of the Service and reserves the right to decide, in its own discretion, what improvements and technical adjustments to make. SkyMaker is entitled to modify, update or discontinue, temporarily or permanently, the Service or its functions and features at any time, including by removing such features and functions. If any such revision to the Service should cause Customer more than minor inconvenience and provided that Customer has paid the Subscription Fee, Customer is entitled to, within 30 days of the effective date of the revision terminate the Agreement in writing.

16. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

- 16.1 From SkyMaker. During the Term, SkyMaker warrants that it will provide the Service in a professional manner and make commercially reasonable efforts to provide continuous access to the Service at the Access Point and to keep the Service operational.
- 16.2 From Customer. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Service; and (c) it is a corporation, limited company or another business entity authorized to do business pursuant to applicable law.
- 16.3 Warranty Disclaimers. Except to the extent set forth in Subsection 16.1 above, CUSTOMER ACCEPTS THAT THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND THAT CUSTOMER USES THE SERVICE AT ITS OWN RISK. SKYMAKER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF FITNESS OR MERCHANTABILITY FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. Without limiting the generality of the foregoing: SkyMaker has no obligation to indemnify or defend Customer or Users against claims related to infringement of intellectual property, and SkyMaker does not represent or warrant (a) that the Service will meet Customer's requirements; (b) that the Service will perform without interruption or error; and (c) that the Service is safe from hacking or other unauthorized intrusion or that Customer Content will remain private or secure. IN ADDITION, SKYMAKER MAKES NO REPRESENTATION NOR DOES IT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY THIRD-PARTY CONTENT, CUSTOMER CONTENT, PROJECTS OR ANY OTHER PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY ON OR THROUGH THE SERVICE. CUSTOMER UNDERSTANDS AND AGREES THAT SKYMAKER IS NOT RESPONSIBLE OR LIABLE FOR ANY TRANSACTION BETWEEN CUSTOMER AND THIRD-PARTY PROVIDERS OF CONTENT OR PROJECTS ACCESSIBLE ON OR THROUGH THE SERVICE.

17. INDEMNIFICATION

17.1 Customer shall indemnify and hold harmless SkyMaker and the SkyMaker's Affiliates (as defined below) against any third party claim, suit, proceeding, judgement and/or award ("Indemnified Claim"), and pay all the losses, damages, costs and expenses (including attorneys fees) connected therewith, which may be imposed on SkyMaker and its Affiliates arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Service, including without limitation: (a) claims by Users and Customer's own customers; (b) claims related to Applications or Customer Content; (c) claims related to unauthorized disclosure or exposure of personal data; and (c) claims related to infringement or violation of intellectual property rights, trade secret or confidentiality rights of a third party (including any Users) by Customer Content or any other data submitted to the Service through Customer's Account. Indemnified Claims include claims arising out of or related to SkyMaker's negligence. The SkyMaker Affiliates are SkyMaker's officers, directors, shareholders, parents, subsidiaries, agents, successors and assigns.

17.2 In case of an Indemnified Claim by a third party, SkyMaker shall promptly notify Customer in writing of the claim. SkyMaker reserves the right to, at its own cost, assume sole control of the defense of any Indemnified Claim, including appeals, negotiations and any settlement thereof, in which case Customer will fully cooperate with SkyMaker in asserting any available defenses.

18. LIMITATION OF LIABILITY

18.1 SkyMaker's liability, per calendar year, for damages arising out of or related to this Agreement shall not exceed the amount paid by Customer for the Services during the twelve (12) months immediately preceding the event that gave rise to such liability. The limitation of liability in this Section 18.1 does not apply in the event of personal injury, intent or gross negligence.

18.2 In no event will SkyMaker be liable for any indirect damages of any kind, such as lost profits, diminished production, costs of retaining another provider and similar costs or losses. SkyMaker is not liable for Customer's loss of data.

19. EARLY TERMINATION

19.1 In addition to what is otherwise stated in the Agreement, either party may terminate the Agreement:

- (a) If the other party is in material breach of any of its obligations under the Agreement and fails to remedy such breach within 30 days of written notice of the breach; or
- (b) with immediate effect in the event the other party is placed into bankruptcy, commences composition negotiations, enters into liquidation, or might otherwise be deemed to have become insolvent.

20. NOTICE

20.1 SkyMaker may send notices pursuant to this Agreement to Customer's email contact points provided by Customer. Such notices will be deemed received 24 hours after they are sent. SkyMaker may also give general notices regarding the Services and notices applicable to the Customer by posting such notices on Customer's Account.

20.2 If the last email address that Customer provided to SkyMaker is not valid, or for any reason is not capable of delivering to Customer any notices required or permitted by the

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Agreement, SkyMaker's dispatch of the email containing such notice will nonetheless constitute effective notice.

20.3 Customer may send notices pursuant to this Agreement to legal@dynamaker.com and such notices will be deemed received 72 hours after they are sent.

21. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of Sweden, without application of its conflict of laws principles. Each party agrees to the exclusive jurisdiction of the court of Linköping, Sweden to resolve any dispute, claim, or controversy arising out of or relating to this Agreement.

22. MISCELLANEOUS

22.1 Independent Contractors. The parties are independent contractors and each party agrees that no partnership, joint venture, or agency relationship exists between them.

22.2 Assignment. Customer may not assign this Agreement or give or transfer the Service, or any interest in the Service, without SkyMaker's express written consent. Except to the extent forbidden in this Subsection 22.2, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

22.3 Force Majeure. Neither party shall be responsible for failure or delay of performance to the extent caused by a circumstance beyond the performing party's reasonable control, including but not limited to acts of war, terrorism or sabotage; fires, floods, earthquakes and lightning strikes or other acts of nature; strikes or other labor disputes; or changes in regulations. This Subsection 22.3 does not excuse Customer's obligation to pay for the Services.

22.4 Publicity. SkyMaker has the right to reference Customer in any materials, presentations or media advertising or promoting SkyMaker, as a Service customer.

22.5 Severability. If any provision of this Agreement is found to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

22.6 Entire Agreement. This Agreement constitutes the complete agreement of the parties for the Services and supersedes and merges all prior writings, negotiations and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.