

MANUFACTON Terms & Conditions

Last Modified: May 2025

PLEASE READ THESE TERMS AND CONDITIONS (“TERMS”) BEFORE USING THE MANUFACTON SERVICE (AS DEFINED BELOW). THESE TERMS, INCLUDING ANY CUSTOMER SUBSCRIPTION AGREEMENT OR SERVICE ORDER FORMS THAT REFERENCE THESE TERMS (“ORDER FORMS”) FORM A BINDING AND EXECUTED WRITTEN

AGREEMENT (THE “AGREEMENT”) BETWEEN DESIGN DATA CORP, DBA SDS2 AND ALLPLAN, A NEBRASKA CORPORATION (TOGETHER, "ALLPLAN") AND THE USER ACCESSING OR USING THE MANUFACTON SERVICE (“USER” or “YOU”). These terms are in addition to any contractual terms between ALLPLAN and the subscriber entity that provides the user access to the Manufacton Service.

THIS AGREEMENT IS EFFECTIVE AS OF THE DATE YOU FIRST CLICK THE “SIGN UP” BUTTON TO SIGN UP TO USE THE MANUFACTON SERVICE (OR ANY SIMILAR BUTTON OR LINK OR OTHER MECHANISM AS MAY BE DESIGNATED BY ALLPLAN TO SHOW YOUR ACCEPTANCE OF THIS AGREEMENT) OR AS OF THE DATE YOU FIRST LOG IN TO THE MANUFACTON SERVICE (SUCH DATE, THE “EFFECTIVE DATE”). You represent and warrant that: (i) you have read and understand this Agreement; and (iii) you agree, personally and on behalf of any party that you represent, to be legally bound by this Agreement. ACCEPTANCE OF THIS AGREEMENT IS REQUIRED AS A CONDITION TO PROCEEDING WITH THE DOWNLOAD, INSTALLATION, ACCESS AND/OR USE OF THE MANUFACTON SERVICE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT, DO NOT CLICK THE “SIGN UP” OR LOGIN BUTTON AND DO NOT USE THE MANUFACTON SERVICE.

USER AND ALLPLAN MAY EACH BE REFERRED TO HEREIN AS A “PARTY” IN THESE TERMS, AND ARE, COLLECTIVELY, THE “PARTIES”.

ALLPLAN RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO CHANGE, MODIFY, ADD OR DELETE PORTIONS OF THESE TERMS AT ANY TIME EXCEPT AS EXPRESSLY PROVIDED IN THE ARBITRATION PROVISION BELOW. IF ALLPLAN CHANGES THESE TERMS, IT WILL POST THE CHANGES ON THIS PAGE AND WILL INDICATE AT THE TOP OF THIS PAGE THE DATE THESE TERMS WERE LAST REVISED. YOU SHOULD PERIODICALLY VISIT THIS PAGE TO REVIEW THE CURRENT TERMS SO YOU ARE AWARE OF ANY REVISION TO WHICH YOU ARE BOUND. YOUR CONTINUED USE OF THE MANUFACTON SERVICE (AS DEFINED BELOW) AFTER ANY SUCH CHANGES CONSTITUTES YOUR ACCEPTANCE OF THE NEW TERMS. IF YOU DO NOT AGREE TO ABIDE BY THESE OR ANY FUTURE TERMS, DO NOT USE OR ACCESS (OR CONTINUE TO USE OR ACCESS) THE MANUFACTON

SERVICE.

IN ADDITION, WHEN USING CERTAIN SERVICES, YOU SHALL BE SUBJECT TO ANY ADDITIONAL TERMS APPLICABLE TO SUCH SERVICES THAT MAY BE POSTED ON THE SERVICE FROM TIME TO TIME, INCLUDING, WITHOUT LIMITATION, THE PRIVACY POLICY LOCATED HERE. ALL SUCH TERMS ARE HEREBY INCORPORATED BY REFERENCE INTO THESE TERMS.

THESE TERMS CONTAIN AN ARBITRATION AGREEMENT, WHICH WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST ALLPLAN TO BINDING AND FINAL ARBITRATION. UNDER THE ARBITRATION AGREEMENT, (1) YOU WILL BE PERMITTED TO PURSUE CLAIMS AGAINST COMPANY ONLY ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND (2) YOU WILL BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY ON AN INDIVIDUAL BASIS.

IN CONSIDERATION OF THE MUTUAL PROMISES BELOW AND OTHER GOOD AND VALUABLE CONSIDERATION THE SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

BACKGROUND

ALLPLAN offers a software-as-a-service platform that allows users in the construction industry to collaborate, share information among employees, subcontractors and other authorized invitees involved in the applicable project, track progress, and manage jobsite logistics. User wishes to access, and ALLPLAN is willing to provide User access, to use the Manufacton Service on the terms and conditions described in this Agreement.

1. Definitions

The following terms, when used in this Agreement shall have the following meanings:

“Manufacton Service” means, ALLPLAN’s Manufacton-branded software-as-a-service collaboration and logistics software platform, which ALLPLAN makes available to User as a service over the Internet.”

Confidential Information” means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either Party (the “Disclosing Party”) that the Disclosing Party has either marked as confidential or

proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other Party (the “Receiving Party”); provided, however, that a Disclosing Party’s business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services shall be deemed Confidential Information of the Disclosing Party even if not so marked or identified. Information will not be deemed “Confidential Information” if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is independently developed by the Receiving Party.

“User Content” means any creative or other content created, developed, submitted or otherwise made available by or on behalf of User using the Manufacton Service, including any contributions to any message boards, chat rooms, personal web pages or profiles, forums, bulletin boards or other interactive features offered by the Manufacton Service.

2. ACCESS TO MANUFACTON SERVICE; LICENSES.

2.1 Access to Manufacton Service.

Subject to the terms and conditions of this Agreement, ALLPLAN hereby grants User a non-exclusive right to access and use the Manufacton Service for its internal business purposes. User shall not license, sublicense, sell, resell, lease, transfer, distribute, time share, or otherwise commercially exploit or make the Manufacton Service available to any third party or reverse-engineer, decompile, translate or create derivative works of the Manufacton Service in any manner. All ownership rights, title, and interest in and to the Manufacton Service, as such may be modified, upgraded, and/or enhanced from time to time (together with all intellectual property rights therein) will remain with and belong exclusively to ALLPLAN. ALLPLAN reserves all right, title and interest in and to the Manufacton Service not expressly granted to User herein.

You acknowledge that your access to the Manufacton Service may be subject to an Administrator Account managed by your employer or other entity that may be accessed by a designated individual or individuals (“Administrator(s)”). Administrators may include Company Administrators, Project Administrators, and other Administrator roles. Administrators have the right to access and to administer your account. Specifically, depending on the settings of such Administrator Account, Administrators have the ability and right to:

- (a) view every project created by you and all projects that you are invited to;
- (b) edit your login credentials, including logging into the Manufacton Service or its applications under your accounts or removing your accounts;
- (c) create a project and name any user as an Administrator;
- (d) invite additional companies and users to their projects;
- (e) grant Administrator status to other users, so that there may be multiple Administrators for a single project;
- (f) remove any account it administers from any project, which terminates the ability of the account's individual user to create new content in such project or see any User Content added to such project;
- (g) modify a project's settings;
- (h) remove any individual user from a project, which terminates such user's ability to create or view User Content for such project; and/or
- (i) remove any company, and therefore all of the individual users at such company, from such project, which terminates all such users' ability to create or view User Content for such project.

2.2 User Responsibilities

- (a) You agree to abide by all laws, rules, and regulations that are applicable to you and your use of the Manufacton Service and shall use the Manufacton Service solely for its legitimate business purposes as contemplated by this Agreement and shall not interfere with or disrupt the integrity or performance of the Manufacton Service or the data contained therein or attempt to gain unauthorized access to the Manufacton Service or its related systems or networks.
- (b) You shall not include in any User Content any content that is obscene, defamatory, illegal, deceptive, gambling-related, or hateful.
- (c) You acknowledge and agrees that you and your employer (or other sponsoring entity) are individually and collectively responsible for your User Content and for your conduct while using the Manufacton Service. By creating, submitting, posting, developing or otherwise making Content available to ALLPLAN and/or others, you acknowledge and agrees that: (i) You will evaluate and bear all risks associated with your User Content; (ii) under no circumstances will ALLPLAN be liable in any way for your User Content, including, but not limited to, any loss or damage, any errors or omissions, or any unauthorized access or use; and (iii) you (and not ALLPLAN) are responsible for backing up and protecting the security and confidentiality of your User Content. You are encouraged to maintain copies on your local computer or local network and to use the latest encryption and other security technology to protect your User Content.

- (d) ALLPLAN reserves the right to discontinue your use of the Manufacton Service (or any components thereof) for any breach of this Section 2.2 or that is subject to a good faith complaint, until the complaint is resolved to ALLPLAN's reasonable satisfaction. ALLPLAN reserves the right to review all User Content and to reject or suppress certain User Content, or request modifications to such User Content, but does not assume or undertake any obligation to do any of the foregoing.

2.3 Data.

As between the parties, you or your employer (or other sponsoring entity) own the data you submit via the Manufacton Service and the data generated therefrom that is provided by ALLPLAN to you (the "Data"), except that ALLPLAN may: (i) copy, use, modify, distribute, display and disclose Data solely to the extent necessary to provide the Manufacton Service pursuant to the terms and conditions of this Agreement (including, without limitation, for purposes of troubleshooting and problem resolution); (ii) copy, modify and use Data in connection with its business operations and functions, including, but not limited to, operational analytics and reporting, internal financial reporting and analysis, audit functions, and archival purposes; and (iii) copy, modify and use Data on an aggregate and de-identified basis, stripped of any personally identifiable information, for marketing purposes and internal business purposes and analytics, provided that such use or disclosure does not identify you or consist of data solely attributable to you.

2.4 Feedback.

You may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to ALLPLAN with respect to the Manufacton Service. ALLPLAN shall have full discretion to determine whether or not to proceed with the development of the requested enhancements, new features or functionality. You hereby grants ALLPLAN a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback; and (b) use the Feedback and/or any subject matter thereof, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody or are configured for use in practicing, the Feedback and/or any subject matter of the Feedback.

4. LICENSE, OWNERSHIP, AND CONFIDENTIALITY

4.1 User License.

You hereby grant ALLPLAN a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to copy, distribute, transmit, display, perform, and create derivative works of your User Content solely to perform its obligations hereunder, including without limitation, to provide you with the Manufacton Service in accordance with this Agreement.

4.2 ALLPLAN Ownership Rights.

Except for the rights granted hereunder, all rights, title and interests, including, but not limited to, all worldwide patent, copyright, trademark, trade secret and any other rights in and to the Manufacton Service and any other ALLPLAN product or service are retained by ALLPLAN. You agree that you shall not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of ALLPLAN or its licensors in and to such intellectual property rights.

4.3 Nondisclosure and Use Restrictions.

Each Party acknowledges that the Confidential Information constitutes valuable trade secrets and proprietary information of a Party, and each Party agrees that it shall use the Confidential Information of the other Party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other Party's prior written consent, except as otherwise permitted hereunder. Nothing in this Section 4.3 is intended to restrict or otherwise limit the exercise by a Party of the rights and licenses granted to it under this Agreement; provided that such Party uses reasonable measures to protect the confidentiality and value of the other Party's Confidential Information. Notwithstanding any provision of this Agreement, either Party may disclose this Agreement, in whole or in part (a) to its employees, officers, directors, attorneys, auditors, financial advisors and/or subcontractors who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and (b) as reasonably deemed by a Party to be required by law (in which case each Party shall provide the other with prior written notification thereof, shall provide such Party with the opportunity to contest such disclosure, and shall use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law). Each Party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section 4.3, the non-breaching Party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each Party shall promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement. Upon the termination of this Agreement, each receiving Party agrees to promptly return to disclosing

Party or destroy all Confidential Information of the disclosing Party that is in the possession of receiving Party and to certify the return or destruction of all such Confidential Information and embodiments.

5. REPRESENTATIONS, WARRANTIES, EXCLUSIONS AND LIMITATIONS

5.1 Representations and Warranties of Each Party.

Each Party represents and warrants to the other Party that (a) such Party has the required power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party; and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both Parties.

5.2 Representations and Warranties of User.

You further represent and warrant that you have the full legal authority to grant the rights in and to the User Content granted in this Agreement.

5.3 Exclusions.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE MANUFACTON SERVICE IS PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS AND ALLPLAN DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. YOUR USE OF THE MANUFACTON SERVICE IS AT USER’S OWN DISCRETION AND RISK. ALLPLAN AND ITS AFFILIATES, AGENTS AND SUPPLIERS AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES (THE “ALLPLAN PARTIES”) DO NOT WARRANT THAT ANY USE OF OR ACCESS TO THE SERVICE OFFERING WILL BE ERROR-FREE, COMPLETE, SECURE OR YOU’RE YOUR REQUIREMENTS OR EXPECTATIONS; THAT OPERATION OR AVAILABILITY WILL BE UNINTERRUPTED; OR THAT ERRORS OR FAILURES WILL BE CORRECTED OR REMEDIED; AND ALLPLAN PARTIES HEREBY DISCLAIM ANY AND ALL LIABILITY IN CONNECTION THEREWITH. ALLPLAN PARTIES DO NOT WARRANT THAT THE MANUFACTON SERVICE WILL PERFORM IN ANY PARTICULAR MANNER AND HEREBY DISCLAIM LIABILITY FOR NEGLIGENCE AND GROSS NEGLIGENCE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, YOU ACKNOWLEDGE AND AGREE THAT YOU AND YOUR EMPLOYER (OR OTHER SPONSORING ENTITY) ARE INDIVIDUALLY AND COLLECTIVELY RESPONSIBLE FOR (AND ALLPLAN PARTIES ASSUME NO RESPONSIBILITY AND WILL HAVE NO LIABILITY OF ANY KIND FOR) (i) THE DECISIONS THAT YOUR MAY MAKE REGARDING THE MANUFACTON SERVICE, (ii) USE OF THE MANUFACTON SERVICE INCLUDING ANY CONTENT, DATA, INFORMATION, OR OTHER MATERIAL ACCESSED BY YOU IN

CONNECTION WITH THE MANUFACTON SERVICE, OR (iii) ANY EFFECTS ON YOU'RE YOUR BUSINESS AND/OR THAT OF YOUR EMPLOYER (OR OTHER SPONSORING ENTITY) THAT MAY RESULT FROM SUCH USE. ALLPLAN PARTIES MAKE NO WARRANTIES TO ANY THIRD PARTY. YOU AND YOUR EMPLOYER (OR OTHER SPONSORING ENTITY) ARE INDIVIDUALLY AND COLLECTIVELY RESPONSIBLE FOR ANY DAMAGE IN CONNECTION WITH THE MANUFACTON SERVICE INCLUDING ANY CONTENT, DATA, INFORMATION, OR OTHER MATERIAL ACCESSED BY YOU IN CONNECTION WITH THE MANUFACTON SERVICE, INCLUDING, WITHOUT LIMITATION, TO YOUR COMPUTER SYSTEM OR LOSS OF DATA. ALLPLAN PARTIES DO NOT REPRESENT OR WARRANT THAT THE MANUFACTON SERVICE IS OR WILL BE APPROPRIATE OR AVAILABLE FOR USE IN ANY PARTICULAR JURISDICTION AND YOU ACKNOWLEDGE AND AGREE THAT ALLPLAN MAY LIMIT AVAILABILITY, IN WHOLE OR IN PART, TO ANY GEOGRAPHIC AREA, JURISDICTION OR LANGUAGE THAT ALLPLAN CHOOSES, AT ANY TIME, IN ALLPLAN'S SOLE DISCRETION. This Section 5.3 will be enforceable to the maximum extent allowed by applicable law. No information or advice (whether written, oral or otherwise) provided by ALLPLAN Parties or their representatives will create any warranty or in any way affect the disclaimers of warranty or limitations of liability expressly provided in these Terms.

5.4 Functionality Limitations.

THE MANUFACTON SERVICE IS NOT A SUBSTITUTE FOR YOUR OWN JUDGMENT (INCLUDING PROFESSIONAL JUDGMENT) OR INDEPENDENT TESTING, DESIGN, ESTIMATION OR ANALYSIS, AS APPLICABLE. DUE TO THE LARGE VARIETY OF POTENTIAL APPLICATIONS FOR THE MANUFACTON SERVICE, THE MANUFACTON SERVICE HAS NOT BEEN TESTED IN ALL SITUATIONS UNDER WHICH IT MAY BE USED AND MAY NOT ACHIEVE THE RESULTS USER DESIRES. WITHOUT LIMITATION OF SECTION 2.2 (USER RESPONSIBILITIES) OR 5.3 (EXCLUSIONS), ALLPLAN PARTIES SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY RESULTS OR OUTPUT OBTAINED OR OTHERWISE VIEWED THROUGH THE MANUFACTON SERVICE OR ANY MATERIALS DEVELOPED BY USER IN CONNECTION WITH THE MANUFACTON SERVICE. YOU AND YOUR EMPLOYER (OR OTHER SPONSORING ENTITY) ARE INDIVIDUALLY AND COLLECTIVELY RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF THE USE OF THE MANUFACTON SERVICE. THIS RESPONSIBILITY INCLUDES, BUT IS NOT LIMITED TO, THE DETERMINATION OF APPROPRIATE USES FOR THE MANUFACTON SERVICE AND THE SELECTION OF THE MANUFACTON SERVICE AND OTHER PROGRAMS TO ACHIEVE YOUR INTENDED RESULTS. YOU AND YOUR EMPLOYER (OR OTHER SPONSORING ENTITY) ARE ALSO INDIVIDUALLY AND COLLECTIVELY RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY, ACCURACY AND COMPLETENESS OF MANUFACTON SERVICE RESULTS, OUTPUT OR MATERIALS DEVELOPED BY USER IN CONNECTION WITH THE MANUFACTON SERVICE (IF ANY), INCLUDING ALL ITEMS VIEWED OR DESIGNED USING THE MANUFACTON SERVICE.

5.5 Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW AND

NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (A) IN NO EVENT WILL ALLPLAN PARTIES BE LIABLE HEREUNDER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR ANY OTHER DAMAGES WHATSOEVER (HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE), INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER, OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, NOR WILL ANY OF THE FOREGOING PARTIES BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM A FORCE MAJEURE OR AN ACT OF A THIRD PARTY OR OF NO FAULT ON ITS BEHALF, AND (B) THE TOTAL CUMULATIVE COLLECTIVE LIABILITY OF ALLPLAN PARTIES FOR ALL COSTS, LOSSES OR DAMAGES FROM ALL CLAIMS, ACTIONS OR SUITS HOWEVER CAUSED OR ARISING FROM OR IN RELATION TO USER'S USE OF THE SERVICE OFFERING SHALL NOT EXCEED THE LESSER OF ALL AMOUNTS PAID BY USER FOR THE SERVICE OFFERING GIVING RISE TO THE CLAIM IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE CLAIM OR ONE HUNDRED DOLLARS (\$100).

5.6 Release and Waiver.

To the maximum extent permitted by applicable law, you hereby release and waive all claims against ALLPLAN Parties from any and all liability for claims, damages (direct and consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising out of or in any way connected with use of the Manufacton Service. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE § 1542, WHICH STATES "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." Residents of other states and nations similarly waive their rights under applicable and/or analogous laws, statutes, or regulations.

5.7 Basis of the Bargain.

The parties agree that releases, waivers, warranty disclaimers, limitations of liability and indemnities in these Terms are a fundamental basis of the bargain between you and ALLPLAN, and are a material part of the consideration received by ALLPLAN for the provision of the Manufacton Service under these Terms, and ALLPLAN would not have entered into these Terms and provided the Manufacton Service in the absence of such releases, waivers, warranty disclaimers, limitations of liability and indemnities.

6. INDEMNIFICATION

You and your employer (or other sponsoring entity) shall, jointly and severally, and to the fullest extent permitted by law, indemnify, defend (at ALLPLAN's request), and hold harmless ALLPLAN Parties against any and all losses, liabilities, expenses (including reasonable attorneys' fees) suffered or incurred by ALLPLAN Parties by reason of any claim, suit or proceeding ("**Claim**") arising out of or in connection with: (a) User Content or use of User Content, including, without limitation, any assertion that User Content or the use thereof may infringe any copyright, trademark, or other intellectual property or other rights of any individual or entity, or are a misappropriation of any individual or entity's trade secret, or contain any libelous, defamatory, disparaging, pornographic, or obscene materials or use thereof caused death or bodily injury or damage to the real or tangible property of any third party; (b) any breach of or failure by you to comply with these Terms; or (c) your use of the Manufacton Service (or anyone who accesses the Manufacton Service through User pursuant to Section 2.1). If requested by ALLPLAN to defend a Claim, you and your employer (or other sponsoring entity) will not agree to any settlement without the prior written consent of ALLPLAN, and ALLPLAN shall have the right to participate, at its own expense, in the defense of any Claim with counsel of its own choosing.

7. TERM, TERMINATION

7.1 Term.

This Agreement will commence as of the Effective Date, and unless earlier terminated in accordance with this Agreement, will remain in effect for as long as you are a User of the Manufacton Service.

7.2 Termination.

ALLPLAN may terminate this Agreement and your access to the Manufacton Service if you commit a material breach of this Agreement.

7.3 Obligations on Termination.

Upon termination or expiration of the Term or other termination of this Agreement all rights granted hereunder and all obligations of ALLPLAN to provide the Manufacton Service shall immediately terminate. Sections 1, 2.2(c), 2.3, 2.4, 2.5, and 4-9 shall survive the termination or expiration of this Agreement or the Term for any reason whatsoever.

7.4 Force Majeure.

ALLPLAN shall not have any liability under this Agreement for ALLPLAN'S failure or delay in performing any of the obligations imposed by this Agreement to the extent such failure or delay is the result of any of the following events (each, a "Force Majeure Event"): (i) any fire,

explosion, unusually severe weather, natural disaster or Act of God; (ii) epidemic; any nuclear, biological, chemical, or similar attack; any other public health or safety emergency; any act of terrorism; and any action reasonably taken in response to any of the foregoing; (iii) any act of declared or undeclared war or of a public enemy, or any riot or insurrection; (iv) damage to machinery or equipment; any disruption in transportation, communications, electric power or other utilities, or other vital infrastructure; or any means of disrupting or damaging internet or other computer networks or facilities; (v) any strike, lockout or other labor dispute or action; (vi) any action taken in response to any of the foregoing events by any civil or military authority; or (vii) any other event beyond such Party's control; provided that financial inability in and of itself shall not be a Force Majeure Event.

8. DISPUTE RESOLUTION BY BINDING ARBITRATION AND CLASS ACTION WAIVER ***YOU SHOULD READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS***

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling ALLPLAN's Customer Service Department at [\(888\) 883-2492](tel:8888832492) or by emailing ALLPLAN at manufacton-support@allplan.com.

However, if ALLPLAN is not able to resolve a dispute after attempting to do so informally, then as a condition to your use of the Manufacton Service, the parties mutually agree to resolve such dispute through binding arbitration under the auspices of JAMS Alternative Dispute Resolution ("JAMS"). You and ALLPLAN mutually agree to arbitrate all unresolved disputes and claims between them. This agreement to arbitrate is intended to be broadly interpreted.

JAMS will administer any such arbitration under its Comprehensive Arbitration Rules & Procedures and Consumer Minimum Standards. The arbitration will be held in Lincoln, Nebraska or any other location as to which the parties may then mutually agree. A party seeking arbitration must first send to the other, by certified mail, a written notice of dispute. Any notice to ALLPLAN must be addressed to 8333 Glynoaks Dr., Ste. 200 Lincoln, NE 68516.

Any notice to User shall be sent to User's address as set forth in ALLPLAN's records of account or such other legal address as ALLPLAN is able to identify. ***You agree that, by entering into this Agreement, you and ALLPLAN are each waiving the right to a trial by jury or to participate in a class action.*** User may resolve disputes with ALLPLAN or participating attorneys only on an individual basis and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.

Notwithstanding this agreement to arbitrate disputes as provided above, the following exceptions will apply to the resolution of disputes between the parties:

- ALLPLAN may bring a lawsuit against you in any court of competent jurisdiction solely for injunctive relief to stop any unauthorized use or abuse of the Manufacton Service without first engaging in arbitration or the informal dispute-resolution process described above.
- ALLPLAN may bring a lawsuit against you in any court of competent jurisdiction solely for injunctive relief to stop any intellectual property infringement without first engaging in arbitration or the informal dispute-resolution process described above.
- In the event that the agreement to arbitrate provided herein is found to be inapplicable or unenforceable for any reason, then as a condition to your use of the Manufacton Service you parties agree that any resulting judicial proceedings will be brought in the federal or state courts located in Lancaster County, Nebraska, and by your use of the Manufacton Service you expressly consents to venue and personal jurisdiction of the courts therein.

ALLPLAN may, in the future, make changes to these provisions regarding dispute resolution and arbitration by providing notice in accordance with these Terms. You may reject any changes made during your use of the Manufacton Service by sending written notice to ALLPLAN. Such notice must be given within thirty (30) calendar days of the notice of modification to the following address: 8333 Glynoaks Dr., Ste. 200 Lincoln, NE 68516. You expressly agree that ALLPLAN may terminate your access to the Manufacton Service if you reject the then-current Terms.

9. GENERAL

9.1 Publicity.

You will not make any separate public announcement regarding this Agreement or any of the contents contained herein without the prior written consent of ALLPLAN.

9.2 No Assignment.

Neither Party may assign this Agreement, or sublicense any of the rights granted herein, in whole or in part, without the prior written consent of the non-assigning Party, which consent may be withheld at the sole discretion of the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement without such consent to any person or entity controlling, controlled by, or controlled in conjunction with such Party or that acquires all or substantially all of the assets and business of the assigning Party to which this Agreement relates by merger or purchase, provided that such person or entity assumes in writing all of the terms and conditions of this Agreement. Any attempt by either Party to assign or transfer any of

the rights, duties or obligations of this Agreement in violation of the foregoing shall be null and void.

9.3 Amendment; Waiver.

This Agreement may not be amended or modified, in whole or part, by you. No provision or part of this Agreement or remedy hereunder is waived by ALLPLAN except by a writing signed by a duly authorized representative of ALLPLAN. Failure or delay by ALLPLAN to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

9.4 Relationship.

Nothing in this Agreement shall be construed to place the Parties hereto in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner, and nothing herein contained shall give rise or is intended to give rise to any rights of any kind to any third parties. Neither Party will represent to the contrary, either expressly, implicitly or otherwise.

9.5 Severability.

In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date. If any provision or part of this Agreement will, to any extent, be or become invalid, illegal or unenforceable, the remainder of this Agreement will continue in effect, and every other provision of this Agreement will remain valid and enforceable to the full extent permitted by applicable law. In such event, the invalid or unenforceable provision shall be reformed only to the extent necessary to make it enforceable, and such provision as so reformed will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date.

9.6 Governing Law, Jurisdiction.

All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of Nebraska, without regard to its rules of conflict of laws.

9.7 Notices.

All notices to ALLPLAN under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (i) delivered personally; (ii) sent by

confirmed facsimile or other electronic means; (iii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt.

9.8 Entire Agreement.

This Agreement (including the incorporated Privacy Policy) constitutes the entire agreement between ALLPLAN and the User in his individual capacity. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. This Agreement may not be modified or waived, in whole or part, except in writing and signed by an officer or duly authorized representative of ALLPLAN.