



Standard Terms and Conditions

1. Agreement and Definitions. The entire agreement (the "Agreement") between Avanceon and Customer shall consist of these Standard Terms and Conditions, any accompanying Proposal issued by Avanceon, and any purchase order issued by Customer. To the extent any purchase order issued by Customer conflicts with these terms and conditions, the Avanceon Terms and Conditions shall control and any inconsistent or conflicting terms in such purchase order are deemed rejected unless agreed to by both Customer and Avanceon in writing. "Services" means the services to be provided by Avanceon to Customer and "Products" means and refers to any goods to be provided by Avanceon to Customer. "Work" means the entirety of the Products and Services Avanceon is to provide pursuant to the accompanying Proposal. "Proposal" means any proposal, quote, quotation, or other offer by Avanceon to provide the Work. "Customer" means the party to whom the accompanying Proposal from Avanceon is directed. To the extent the Proposal is directed to someone other than the owner or end user of the Services or Products, "Owner" means and refers to the owner or end user. If any part of the Agreement is found to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

2. Price and Payment. Customer shall pay Avanceon for the Work at the hourly rate and/or prices set forth in the Proposal or as otherwise agreed in writing. Customer shall pay Avanceon within thirty (30) days of receipt of an invoice which Avanceon will provide on a once or twice monthly basis for Work performed to date unless the parties agree otherwise. Customer is liable for all federal, state, local and foreign taxes and duties associated with any Products and Services, including sales, use, excise or similar taxes. Any payments not made as required will be assessed an interest charge of 1.5% per month or the highest amount available by law, whichever is larger. In the event Customer fails to make payment when due, and Avanceon provides seven (7) days' written notice, Avanceon shall be entitled to suspend its work under the Agreement until all past-due amounts are paid in full. In such event, Avanceon shall be entitled to payment for any costs incurred for demobilization, remobilization, and increased costs of performance and the time for Avanceon to complete the Work will be equitably extended to account for such suspension.

3. Schedule and Force Majeure. Avanceon will perform the Work pursuant to a mutually agreeable schedule. In the event of delays caused by Customer or Owner's acts or omissions, Avanceon shall be entitled to a reasonable adjustment in the schedule and to an equitable adjustment in the contract sum. Such adjustment shall include Avanceon's demobilization and remobilization time and costs, including any time that Customer requires Avanceon to remain ready and available for work at the Customer's convenience, with any such time being considered as time worked for which Avanceon will be entitled to reimbursement by Customer. In the event of unforeseen delays caused by events outside either party's control, including without limitation changes to the scope of Work, delays by Customer in providing information to Avanceon, war, terrorism, fire, natural disasters, cyber-attack, espionage, data security threats, labor disruptions, shipping delays, unavailability of materials or equipment, acts of governmental authorities, neither party will be responsible to the other for failure or delay in performance, except that Avanceon shall be granted an equitable extension of time to complete the Work and where necessary to make Avanceon whole, a compensation adjustment.

4. Customer Assistance and Cooperation. Customer agrees to cooperate with Avanceon and to provide assistance, including technical personnel, as necessary to fully communicate its requirements to Avanceon. Customer's obligation to cooperate includes, but is not limited to, allowing Avanceon to interview appropriate personnel to assist in determining Customer's requirements and Avanceon's scope of work and timely review and approval of any design or documents. Customer shall appoint an employee with adequate technical expertise, resources and management authority to work with Avanceon and to facilitate Avanceon's Work.

Avanceon's Proposal includes pricing based on its planned process for execution of the Work. Customer agrees not to knowingly and unreasonably interfere with or disrupt Avanceon's planned process for the Work.

5. Customer Approvals. To the extent not already provided by Avanceon in the Proposal or otherwise, and subject to Customer's obligation to provide cooperation, Avanceon will prepare any additional documentation necessary to describe the details of any software development component of the Work ("Designs or Documentation"). Within five (5) days of receipt of the Designs or Documentation, Customer shall review and approve them, in writing, or request changes within the scope of the Work set forth in the Proposal. Avanceon shall notify the Customer if requested changes are outside the scope of the Work

outlined in the Proposal, and to the extent Customer continues to request such changes, Avanceon shall be entitled to an equitable adjustment of the contract price. Once approved, the designs and documentation will become a part of the Agreement.

At Avanceon's request, the Customer agrees to participate in a Factory Acceptance Test ("FAT"), where the software and any related hardware or equipment will be integrated and simulated. The FAT is the opportunity for the Customer to review, conduct quality testing and approve the system by assuring that it conforms to the Agreement, and thus, participation by the Customer is mandatory.

After the FAT, Customer agrees to participate in, approve and cooperate in completion of the Site Acceptance Test ("SAT") to the extent necessary and reasonably requested by Avanceon. Avanceon shall be allowed to fully participate in the SAT.

All software developed and factory tested by Avanceon may still contain "bugs" and or require "tuning" to actual dynamic conditions encountered at the Customer site. Customer acknowledges that the services required to fix "bugs" and "tune" are a normal and billable service during start up, commissioning and SAT.

In the event Customer fails to provide required information and technical support or to participate in the required testing, all Work will be deemed accepted "AS IS" and with no warranties and any work performed by Avanceon thereafter to modify or correct software will be reimbursed by Customer.

Customer agrees that any specific testing requirements not included in Avanceon's Proposal to the Customer or the approved Designs and Documentation shall constitute a change and that Avanceon shall be entitled to additional compensation on a time and material basis for any such additional testing requirements.

6. Changes. Customer may request changes in the scope of Services or Products. All such requests must be in writing, and Customer shall allow Avanceon reasonable time to evaluate the requested change, price the change and submit a written proposal to Customer for the change, including scope, price and delivery. Avanceon shall not be required to proceed with any requested changes unless both parties agree to the change, in writing. These Standard Terms and Conditions shall apply to any changes.

7. Warranties.

Hardware and Equipment Warranty. The only warranty applicable to any hardware or equipment provided pursuant to the Agreement and that is not manufactured by Avanceon shall be the manufacturer's warranty for such hardware or equipment, if any.

Services Warranty. Avanceon warrants that its services shall be performed in a workmanlike manner consistent with current and generally recognized standards in the industry.

Software Warranty. Avanceon warrants that software developed by Avanceon will comply with applicable specifications to which Avanceon and Customer agree.

Avanceon warrants that it will, for a period of ninety (90) days, correct, repair or replace computer software developed by Avanceon that fails to meet the design requirements of the Agreement under normal use. The warranty period for any software that Avanceon develops will begin the earlier of: (a) the date the Customer agrees to the completion of an acceptable SAT; or (b) the date that is three (3) days after the Customer begins to use the software in its normal business operations. Notwithstanding the foregoing, software not developed by Avanceon is not warranted by Avanceon but is subject to assignable warranties provided by the manufacturer, vendor, or licensor of the software, if any. Due to the nature of computer software, Avanceon does not warrant or guaranty that software developed by Avanceon will be error free but warrants and agrees to replace any defect determined to be "repeatable." A repeatable defect is one that can be duplicated on a consistent basis and demonstrated by the Customer. Intermittent or phantom defects are not covered by any warranty. Customer agrees to provide reasonable cooperation and assistance in Avanceon's correction of any defects.

In no event will Avanceon be responsible for (a) any modifications to any Services or Products made by anyone other than Avanceon; (b) damages caused by misuse, improper operation, or improper or insufficient maintenance of any Services or Products; (c) normal wear and tear; (d) any data loss or corruption or personal information data breach; or (e) any alleged

defects in any Services or Products that arise from Avanceon's compliance with designs or other criteria or requirements provided by or through Customer.

THE FOREGOING WARRANTIES AND REMEDIES SHALL BE CUSTOMER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY OR BREACH OF CONTRACT ARISING THEREFROM. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, AVANCEON DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, CURRENCY, TITLE/AGAINST INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liability.

- (a) *Waiver of Consequential Damages:* Avanceon and Customer waive claims against each other for any and all consequential, incidental, special, punitive or indirect damages arising out of or relating to this Agreement, including without limitation loss of use, productivity, reputation, financing, business opportunities, or profits. This mutual waiver will apply regardless of the form of action, whether in contract, strict liability or tort, including negligence.
- (b) Customer's right to recover damages from Avanceon is limited to a maximum of the greater of \$100,000 or 35% of the amount of fees paid to Avanceon for Services provided under the attached Proposal during the twelve (12) months prior to the claim giving rise to such damage but, under no circumstance shall the liability exceed Avanceon's applicable insurance coverage(s).
- (c) Customer acknowledges that this limitation of liability is part of the consideration for the Agreement and was considered by Avanceon in establishing the prices and rates to be charged to the customer, which, but for this limitation, would have been higher.

9. Limitation of Actions. Any action for breach of this contract must be commenced within one (1) year after the cause of action shall accrue, and no such action that is not commenced within such period may be maintained, except any action for non-payment of the purchase price.

10. Intellectual Property.

- (a) "Intellectual Property" means all patents, copyrights, mask works, industrial property rights, trademarks, trade secrets and other rights and information of a similar nature worldwide to the extent that such rights or information are created by Avanceon (alone or acting with Customer or others). Intellectual Property may include, without limitation, source codes, designs, unique processes, drawings, prints, unique specifications, reports, data, and other technical information, regardless of form, and all unique equipment, tools, gauges, patterns, process sheets or work instructions related to the Services or Products.
- (b) Unless the parties agree otherwise in writing or as provided in Subparagraph (c) below, Avanceon shall retain and have complete right, title and interest in and to all Intellectual Property.
- (c) Effective upon Customer's payment to Avanceon of all amounts due and owing, Avanceon hereby grants to Customer, a non-exclusive, royalty-free, perpetual, irrevocable, worldwide right and license to Intellectual Property for the sole purpose of permitting Customer to test or use the Products for its own personal use and for the sole purpose defined in this Agreement.
- (d) If any software provided by Avanceon is subject to user license agreements provided by the manufacturer of the software, Customer agrees to be bound by the terms and conditions of such user license agreements.

11. Indemnity. Each party ("Indemnitor") shall defend, indemnify and hold harmless the other party and its employees and agents ("Indemnitees") from and against all claims, damages, losses and expenses, including attorney's fees, (1) provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and (2) to the extent such claim, damage, loss or expense is caused by any negligent act or omission or misconduct of the Indemnitor, anyone directly or indirectly employed by the Indemnitor or for anyone for whose acts the Indemnitor may be liable, regardless of whether it is caused in part by the Indemnitee. Notwithstanding the foregoing, to the fullest extent permitted by law, Customer shall indemnify, defend (at Customer's sole expense) and hold harmless Avanceon, its subcontractors, and its consultants, and any of their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of

action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) to the extent arising from Customer's obligations to maintain the health and safety of its premises, facility, equipment, fixtures, practices and procedures, employees, agents, and independent contractors, or to the extent arising from the pre-existing or existing conditions of Customer's premises, facility, equipment, fixtures, or practices and procedures.

12. Non-Solicitation of Employees. For a period of one (1) year after termination of the Agreement, Customer shall not, directly or indirectly, employ or solicit for employment, any person employed by Avanceon at any time during the term of the Agreement, including Avanceon's employees, agents or independent contractors, without Avanceon's prior written consent. In the event Customer violates this provision, Customer shall pay to Avanceon, as liquidated damages and not as a penalty, an amount equal to the relevant person's then current annual compensation.

13. Independent Contractor Status. Avanceon is an independent contractor of Customer and will have sole charge over, and be solely responsible for: (a) the payment of its employees and subcontractors and (b) the means, methods, techniques and sequences used in the performance of the Services and the creation of its Products. Both Avanceon and Customer assume that the industrial exemption applies to all services and the Proposal, and Customer acknowledges that individuals not licensed as professional engineers may execute some or all of the Services and create some or all of the Products.

14. Dispute Resolution. The Proposal and these Standard Terms and Conditions will be governed by the laws of Pennsylvania and of the United States of America (including the Federal Arbitration Act, 9 U.S.C. § 1, et seq. with respect to the parties' agreement to arbitrate any dispute arising out of or related to the Proposal or the scope of Work), without regard to rules governing choice or conflict of laws. Customer and Avanceon agree that the Proposal is predominately for the performance of services, not for the sale of goods, and further agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to their agreement. In the event Avanceon and Customer cannot resolve any claim or dispute between them arising out of or related to the Proposal or the scope of Work through direct negotiations, such dispute shall be subject to arbitration in accordance with the Construction Arbitration Rules of the American Arbitration Association. Such arbitration proceedings will be held in Exton, Pennsylvania before a single arbitrator. The prevailing party (as determined by the arbitrator) will be entitled to recover from the other party all costs incurred in resolving the dispute, including reasonable attorneys' and expert fees and the costs of arbitration. The arbitrator's award shall be final and may be entered as a judgment in any court with jurisdiction.

15. Savings Clause and Waiver. If any term of the Proposal or these Standard Terms and Conditions is found to be unenforceable, the remaining terms will remain in effect. The failure of either Avanceon or Customer to exercise any rights under their agreement will not be deemed a waiver of such right except as agreed in writing or as otherwise set forth in these Standard Terms and Conditions.

16. Assignment. Neither Customer nor Avanceon may assign its respective rights and obligations under their agreement without the written consent of the other party. However, Avanceon may subcontract or delegate its Work obligations to other persons or entities, but will nonetheless be responsible to Customer for the performance of the Work as required by the Proposal. Both Customer and Avanceon agree that there are no third-party beneficiaries to their agreement.