

**Terms and Conditions of Service****1. Acceptance of Terms**

- 1.1 Unless otherwise agreed in writing, the supply of all Services offered by AVANSER and/or its associates, related parties, successors and assigns (collectively referred to as "AVANSER") to any persons (hereinafter referred to as "User", "you" or "your") shall be governed by the Terms & Conditions of Service (TCS) set herein.
- 1.2 This TCS is supplementary to the Website General Terms & Conditions, which govern the access and use of the Website, and all provisions are incorporated into the General Terms & Conditions by this reference. By using the Services described herein, you hereby acknowledge and agree to be bound by this TCS and the General Terms & Conditions.

**2. Definitions**

2.1 In these Terms and Conditions of Service ("TCS"), the following terms and expressions shall have the following meanings:

- (a) "AVANSER" means AVANSER Pty Ltd. (ABN 15 107 330 049);
- (b) "Carrier" means the third party telecommunications carrier who operates the Network;
- (c) "Call Recording Service" means the service provided by AVANSER that enables you to record an Incoming Call;
- (d) "Call Tracking Service" means the service provided by AVANSER that enables tracking of relevant Incoming Call information to be made, including but not limited to, the Calling Party's Personal Information and location, advertising source, day, time and duration of the Incoming Call and Incoming Call history;
- (e) "Calling Party" means a person from whom you receive an Incoming Call;
- (f) "Incoming Call" means a telephone call that you receive using AVANSER's Services;
- (g) "Data" means any and all information and reports procured, collected or compiled by AVANSER in respect of a Calling Party, including, without limitation:
  - i. Incoming Call logs;
  - ii. Incoming Call activity reports;
  - iii. Advertisement source of Incoming Calls; and
  - iv. Personal Information of a Calling Party;
- (h) "Dynamic Call Routing Service" means the service provided by AVANSER that enables the automatic routing of Incoming Calls to appropriate branch or regional office based on the Calling Party's phone number, and allows for prompting of the Calling Party to enter a postcode for appropriate routing when the Calling Party's location cannot be determined;
- (i) "Interactive Voice Response Service" means the service provided by AVANSER comprising a system for routing Incoming Calls or providing recorded information for improving Calling Party waiting time and call resolution;
- (j) "Network" means the telecommunications network of the Carrier which AVANSER uses to supply the Services;
- (k) "Missed Call Notification Service" means the service provided by AVANSER that enables the Recording of missed Incoming Call information to be made, including but not limited to, the Calling Party's phone number if the number is not blocked, and a voicemail recording if the Calling Party leaves a message;
- (l) "Personal Information" means information that may be used to identify a Calling Party, including without limitation, the Calling Party's Incoming Call number, address, fax number and/or email address;
- (m) "Phone Number" means an AVANSER telephone number that you wish to use to answer an Incoming Call;
- (n) "Recording" means a recording of an Incoming Call;
- (o) "Services" mean the services supplied by AVANSER under this TCS, comprising of the following:
  - i. Call Recording Service;
  - ii. Call Tracking Service;
  - iii. Dynamic Call Routing Service;
  - iv. Interactive Voice Response Service;
  - v. Missed Call Notification Service; and
  - vi. any other services as AVANSER may provide from time to time;
- (p) "Website" means AVANSER's website [www.avanser.com.au](http://www.avanser.com.au).

**3. Provision of Services**

3.1 In supplying the Services, AVANSER shall provide the following:

- (a) a Phone Number through which the Services shall be utilised and which forms part of the Network of the Carrier;
- (b) equipment required for handling and managing the Services which AVANSER in its sole discretion considers appropriate and necessary; and
- (c) reasonable technical and sales support which AVANSER in its sole discretion shall consider appropriate and necessary.

3.2 Unless explicitly stated otherwise, any new services, features, content or applications offered or made available from time to time by AVANSER to you shall be subject to this TCS.

**4. Your Obligations**

4.1 In using the Services, you expressly agree and acknowledge that:

the Phone Number provided is made available to you only in connection with the supply of Services by AVANSER, and forms part of the

- (a) Services so supplied;
- (b) accordingly:
  - i. you are not entitled to, and you have no right or interest in, any Phone Numbers supplied by AVANSER to you if you decide to terminate the Services herein;
  - ii. you must not port any Phone Numbers supplied by AVANSER to an alternative service provider or Carrier or Network without the prior written consent of AVANSER. You hereby acknowledge and agree that AVANSER shall be entitled to receive compensation from you of an amount to be determined by AVANSER in its sole and exclusive discretion should AVANSER agree to grant consent to you in respect of the aforesaid porting;
  - iii. AVANSER may, without any notice or liability to you, discontinue or modify any Phone Numbers supplied to you at any time for any reason whatsoever, including but not limited to discontinuance or modification required by reason of a request made by the Carrier, Network requirements or statutory, regulatory and legal compliance. You hereby acknowledge and agree that:
    - a. you must, unless this TCS is terminated in accordance with Clause 7, accept any such new or modified Phone Numbers issued to you by AVANSER and that AVANSER shall, but is not obliged to, give you written notice of any the discontinuance of, or modifications made to, a Phone Number as soon as is reasonably practicable; and

- b. you have no claim against AVANSER for any loss or damage you may suffer as a result of such discontinuance or modifications.
- (c) AVANSER may from time to time, change, enhance or update any and all equipment described in Clause 3.1(b) for any reason whatsoever without any notice or liability to you. You hereby acknowledge and agree that you have no claim against AVANSER for any loss or damage you may suffer as a result of such change, enhancement or update.
- 4.2 You further acknowledge, agree and warrant that:
- (a) you will refrain from taking any action which has or is likely to have the effect of interfering with or threatening the operation, stability, viability or integrity of the Network;
  - (b) you must only use the Services for your own business needs and requirements;
  - (c) you must not use the Services for your personal purposes nor for any purposes which are unlawful, abusive, harmful, threatening, defamatory or in any way infringing any copyright, trademark or other intellectual property rights of any other persons;
  - (d) you must not re-supply, re-sell, chain or group the Services in any way without the prior written consent of AVANSER;
  - (e) you are fully responsible for maintaining the confidentiality of your Services password and account issued to you by AVANSER, and are fully responsible for all activities that occur under the same. Accordingly, you must:
    - i. immediately notify AVANSER of any unauthorised use of your password or account or any other breach of security; and
    - ii. ensure that you exit from your account at the end of each session;
    - iii. AVANSER will not be liable to you for any loss or damage you may suffer if a person quoting your password requests changes to your Service or account details. You will be responsible for all fees associated with your Service and account whether transactions were authorised by you or not.
  - (f) you must co-operate with AVANSER in relation to any complaints, enquiries or investigations into or in connection with any services offered by you, in which the Services supplied by AVANSER are utilised. You hereby agree and acknowledge that you shall, at AVANSER's discretion, and without limitation, bear in full any costs associated with such complaints, enquiries or investigations.
- 4.3 You also agree that you must ensure that any other persons having access to, or are using, the Services, including your employee, contractor, officer, agent, authorised representative or other third party, shall be made aware of and will observe the same restrictions as described under Clauses 4.1 and 4.2 above.

## 5. Call Recordings and Personal Information

- 5.1 As part of the process of supplying the Call Recording Service to you or in any other Services supplied to you where Recordings are, at your option, made by us, whenever a Calling Party dials your Phone Number:
- (a) you are requesting AVANSER to initiate an Incoming Call Recording. Once initiated, AVANSER will record the full length of the Incoming Call; and
  - (b) you are requesting AVANSER to collect or compile Personal Information in respect of the Calling Party.
- 5.2 In using the Call Recording Service or any other Services where Recordings are, at your option, made by us, you expressly agree and acknowledge that:
- (a) you authorise AVANSER to make Incoming Call Recordings and collect Personal Information on your behalf. Without limiting the generality of the aforesaid, you specifically authorise AVANSER to act as your agent in respect of all Caller Line Identification data collected by AVANSER;
  - (b) you either:
    - i. authorise AVANSER to play a voice message advising the Calling Party that the Incoming Call is being recorded prior to the said Incoming Call being connected to you or your employee, contractor, officer, agent, authorised representative or other third party answering the Incoming Call; OR
    - ii. make the necessary arrangements to ensure that the Calling Party is provided with the necessary warning about the presence of any Recordings made of an Incoming Call;
  - (c) all Incoming Call Recordings are stored by AVANSER for a period of one (1) month, commencing the date that a Recording is made. Following the expiry of the storage period, you will not be able to retrieve a copy of the Recording and you hereby acknowledge and agree that AVANSER shall have no liability whatsoever for any failure to retain or store such copies of Recordings beyond the said storage period;
  - (d) all Personal Information collected or compiled by AVANSER for, and supplied to, you must be used by you and your employee, contractor, officer, agent, authorised representative or other third party in compliance with the law, including without limitation, any provisions under the Telecommunications Act 1997 (Cth), Privacy Act 1988 (Cth), and the Telecommunications (Interception) Act 1979 (Cth) and all regulations or guidelines promulgated thereunder;
  - (e) you must notify your employee, contractor, officer, agent, authorised representative or other third party that their telephone conversation with a Calling Party in respect of an Incoming Call is being recorded by AVANSER through or in connection with the Services; and
  - (f) AVANSER shall have no liability whatsoever in respect of any use made by you, your employee, contractor, officer, agent, authorised representative or other third party, of the Recordings and its contents, and/or of any Personal Information.

## 6. Billing and Payment

- 6.1 You will be charged in accordance with the rate schedule published or notified by AVANSER from time to time. AVANSER reserves the right to change the rates from time to time. All Charges are exclusive of GST.
- 6.2 You shall pay any and all amounts invoiced by AVANSER to you in relation to the provision of Services by the due date specified in any such invoice. Without limiting any other rights AVANSER may have under this TCS or by force of law or equity, if you fail to make full payment of the aforesaid by the due date, AVANSER may:
- (a) charge interest at the rate of 10% per annum calculated daily on all overdue monies (excluding interest under this Clause) until the same is paid in full;
  - (b) charge an administrative fee for any administrative costs incurred in respect of your failure to make full payment hereof;
  - (c) cancel or suspend your account or your Phone Number;
  - (d) terminate any contracts between you and AVANSER and demand immediate payment of monies due and owing under such contracts;
  - (e) cancel any rebate, discount or allowance due or payable by AVANSER as at the date of the event;
  - (f) institute any recovery process as AVANSER thinks fit at your sole cost and expense.
- 6.3 You hereby acknowledge and agree that you are not entitled to set off or deduct any amounts due and owing by you under this TCS, whether or not an existing dispute or claim has been made by you against AVANSER or for any reason whatsoever.

## 7. Term and Termination

- 7.1 This Agreement shall continue until terminated.
- 7.2 This Agreement will immediately and automatically terminate if AVANSER's right to provide the Services ceases for any reason.
- 7.3 AVANSER may immediately suspend or discontinue the provision of the Services to you, or terminate this Service Agreement with immediate effect by giving notice to you at any time if, in AVANSER's reasonable opinion:

- (a) you breach any of your obligations under this TCS;
- (b) you fail to pay any AVANSER invoice by the due date and time shall be of the essence;
- (c) you cease, or threaten to cease to conduct business in the normal manner; and
- (d) AVANSER's right to provide Services or any Carrier's right to provide access to the Network ceases or is suspended or interrupted for any reason whatsoever.

7.4 Either party may terminate this agreement with 30 days advance notice in writing.

## 8. Intellectual Property

8.1 For the purposes of this TCS, "Works" mean any and all proprietary materials and information embodied in, or relating to, the Services, including:

- (a) all technical processes, systems, methods, software design, algorithms, codes, scripts and databases;
- (b) all inventions, discoveries, improvements, enhancements, processes, information and know-how;
- (c) the Website and all AVANSER domain names, trademarks, trade names, get-ups, whether registered or not;
- (d) all documentation and other records, reports, documents, papers and other materials whatsoever pertaining to the Services; and
- (e) any derivative works of any of the aforesaid.

8.2 You hereby acknowledge and agree that:

- (a) all proprietary rights, title and interests created or embodied in the Works belong to AVANSER to the fullest extent of the law, including all rights to copy, assign or licence such rights, title and interests to others for any purpose as AVANSER sees fit in its sole and absolute discretion;
- (b) accordingly, without prior written consent of AVANSER;
  - i. you must not supply, sell or otherwise make available the Works or any parts thereof to any third parties; and
  - ii. that you will, at your sole cost and expense, do all acts necessary to ensure that if, as a result of any breach of your obligation under Clause 8.2(b)(i), AVANSER's proprietary rights, title or interests herein have been infringed, such infringement shall cease immediately.

## 9. Confidentiality

9.1 AVANSER will at all times maintain as confidential, Confidential Information, meaning all Works, technical and business information and associated matter now in your possession and control or which may exist in the future including but without limitation data, reports, studies and customer information. Confidential Information shall not include information which is generally available in the public domain or was known by AVANSER prior to the disclosure by you or by your employees, representatives or associates.

9.2 Unless expressly stated otherwise in this TCS or in any other terms of service as may be specified by AVANSER in respect of the provision of any service, or unless prohibited by any laws or regulations, all Data resulting from the provision of the Services may be used for AVANSER's own internal research and record keeping purposes and whilst respecting the confidentiality of such Data, AVANSER may extrapolate and use the Data for the aforesaid purposes.

## 10. Status of User

10.1 In using the Services, you acknowledge and agree that:

- (a) there is no relationship between you and AVANSER in common law, contract or otherwise other than that as a User;
- (b) save for the making of any Incoming Call Recording and the collection of any Personal Information by AVANSER in accordance with Clause 5 on your behalf, nothing in this TCS shall create or imply an agency relationship between you and AVANSER, nor will this TCS be deemed to constitute a joint venture or partnership between you and the AVANSER; and
- (c) accordingly, you have no authority or power to enter into any agreement to create any obligation or responsibility on behalf of or in the name of AVANSER.

## 11. Compliance with Laws

11.1 You will at all times comply with the provisions of all laws to your use of the Services and any Recording, including without limitation the Telecommunications Act 1997 (Cth), Privacy Act 1988 (Cth), and the Telecommunications (Interception) Act 1979 (Cth) and all regulations or guidelines promulgated thereunder. In particular, you are solely responsible for giving the Calling Parties any necessary warning about the presence of any Recordings made of an Incoming Call and the use or uses that will be made of the same.

11.2 AVANSER shall have no obligation to advise you upon compliance with any such laws. You shall indemnify and keep indemnified AVANSER from and against any liability arising from any claim that your use of the Service and/or a Recording breaches any law.

## 12. Limitation of Liability and Indemnity

12.1 In the event that this TCS constitutes a supply of services by AVANSER to a person as defined in the Competition and Consumer Act 2010 (Cth), ("the Act"), to the fullest extent permitted by law, all conditions, warranties, representations, liabilities and obligations, whether expressed or implied, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description or representations as to results arising from the use of the Services, are hereby excluded by AVANSER.

12.2 AVANSER shall not be liable, under any circumstances, for your indirect, special, incidental or consequential loss or damage that may arise in respect of this TCS or loss of profit, business, revenue, goodwill or anticipated savings, and AVANSER's liability under this TCS shall be limited solely to the supplying of the Services again or the payment of the cost of having the Services supplied again, as AVANSER may select.

12.3 You shall indemnify AVANSER against all claims, demands, liabilities, loss, expenses, costs and damages incurred by or made against you, as a result of, or arising in connection with, any breach of your obligations under this TCS, including, without limitation, any failure to comply with Clauses 5.2(b)(ii), 5.2(d) and 5.2(e) in respect of Incoming Call Recordings and Personal Information.

## 13. General

13.1 AVANSER may, from time to time, make reasonable variations to this TCS if necessary to comply with any contractual, statutory or a regulatory requirement.

13.2 This TCS contains the entire understanding and agreement between the parties as to its subject matter. No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this agreement or constitute any collateral agreement, warranty or understanding between the parties.

## 14. Applicable Law

14.1 The laws of the state of New South Wales govern this TCS and the parties agree to submit to the jurisdiction of New South Wales courts and tribunals.

## 15. Waiver and Severability of Terms

- 15.1 The failure of AVANSER to exercise or enforce any right or provision of this TCS shall not constitute a waiver of such right or provision.  
 15.2 If any provision of this TCS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of this TCS remain in full force and effect.

<b>Feature Pricing</b>		
<b>Routing Features</b>	<b>Setup</b>	<b>Usage/Monthly</b>
Exchange Based Routing (Per setup):	350	250
Post Code Prompting (Per setup):	350	250
Time Based Routing (Per setup):	350	250
IVR (Per setup):	350	250
Smart IVR (Per setup):	350	250
Call Rotator (Per setup):	350	250
Custom Routing (Per setup):	350	250
Priority Caller Number Routing (Per number):	160	0
<b>Outbound Call Features</b>	<b>Setup</b>	<b>Usage/Monthly</b>
Campaign Dialling (Per setup):	500	0
<b>Porting</b>	<b>Setup</b>	<b>Usage/Monthly</b>
Port 1300/1800 to AVANSER (Per number):	45	0
Port Geo/VMN to AVANSER (Per number):	25	0
<b>Other Features</b>	<b>Setup</b>	<b>Usage/Monthly</b>
Call Outcome (Per setup):	320	200
Call Whisper :	50	0
Basic Call Whisper :	0	0
MMS Inbound (Per number):	110	50
In House Talent :	55	0
Call Survey (Per setup):	320	200
Urgent Request :	50	0
Bulk Export - Call Recording :	50	0
ARTIC (Per user):	450	20
Call Recording - 12 Mth Storage :	0	15
Block Caller ID (Per number):	25	0
Inbound Lead Notice :	25	15
<b>Features</b>	<b>Setup</b>	<b>Usage/Monthly</b>
Basic Click to Connect (Per button):	0	0
Call Evaluation (Per setup):	320	200
Custom Click to Connect (Per button):	25	0
QR Codes (Per code):	25	0
DONA (Per queue):	0	0
Message Ring Tone (Per setup):	55	0
Recorded Message (Per setup):	55	0
<b>Portal &amp; Integrations</b>	<b>Setup</b>	<b>Usage/Monthly</b>
Portal Access (Per user):	0	0
Customised Daily/Weekly Report (Per report):	110	0
Approved 3rd Party Integration (Per setup):	150	0
Branded MCN (Per setup):	150	0
Branded Portal (Per setup):	450	0
SMS MCN Content Customisation (Per setup):	150	0
SMS MCN Sender Customisation (Per setup):	400	0