

Agreement

This agreement is made between Pep Talk International Pty Ltd ABN 29 117 499 322 whose operations are located at Innovation Centre, 288 Glen Osmond Road, Fullarton, South Australia, 5063 (hereinafter called "Pep Talk"), and you being the legal entity or person subscribing to the service (hereinafter called "Client").

Introduction

Pep Talk is a provider of web-dial telephone-based, network-based, and internet-based services. The Client wishes to use these services. The parties hereby agree as follows:

Terms and Conditions

1. Definitions

'Abuse' includes, but is not limited to, creating or indirectly causing nuisance phone calls, using a stolen or invalid credit card, improperly using a credit card, creating a virus, hack, spam, or distributing, providing, publishing, or promoting material that is harassing, illegal, offensive, defamatory, obscene, threatening, or which contravenes intellectual property rights, or is potentially harmful to Pep Talk, or knowingly distributing a virus.

'Agreement' means the terms and conditions and the pricing.

'Fees' means the fees and charges charged by Pep Talk for providing the Service.

'Force Majeure' means anything outside the reasonable control of a party, including but not limited to explosion, earthquake, fire, flood, storm, tsunami, rebellion, riots, sabotage, terrorism, war, quarantine restriction, labour dispute, transportation embargo or delay, epidemic, power shortage or outage, acts of public enemy, Internet failure and carrier failure.

'Pep Talk' means Pep Talk International Pty Ltd, and its successors, transferees and assigns.

'Service' means the provision of the web-dial Pep-Talk service.

2. Interpretation

Reference to a person or entity includes a natural person, a partnership, corporation, trust, association, an unincorporated body, authority, or other entity. Singular references include plural and vice versa. Reference to a person includes that person's legal representative, permitted assigns and successors.

3. Liability

Performance of the Service is dependent on factors outside Pep Talk's control, including traffic on and technical difficulties with the Internet, telephone networks, SMS and Email systems where they apply to the Service. In no event will either party be liable to the other for any consequential special or incidental damages and including without limitation, damages resulting from loss of profits or business whether based on breach of contract, tort (including negligence), product liability or otherwise. This limitation will apply even if Pep Talk has been advised of the possibility of such damages. Reasonable effort will be made to provide an alternative service should there be a failure of or delay in providing the Service however Pep Talk will not be liable for any loss in accordance with the limitation in this clause 3.

4. Using the Service

The Client will not use the Service for Abuse. Abuse will be reported to law enforcement agencies and damages may be sought. The Client is responsible for determining the suitability of the Service for its particular needs. The Client is responsible for the security of its account, including user name, password, and usage of the Service. The Client will not make or publish or cause to be made or published any false, misleading, deceptive or mis-descriptive statement or information in relation to the Service which may give rise to any liability to Pep Talk, except where such statement or information is based on published information of Pep Talk.

5. Law

This Agreement is governed by the laws of South Australia and each party submits to the jurisdiction of the South Australian courts. If there is a determination that any provision of this Agreement is invalid or unenforceable, that provision will be severable and that determination will not affect the rest of the Agreement and the Agreement shall be deemed amended to the minimum extent necessary to make it valid and enforceable.

6. Charges & Payment

The terms and conditions and pricing of the Service may change from time to time without notice.

The Client agrees to pay the due fees as specified by Pep Talk. Fees not paid in full by the due date may invoke suspension, diminished Service or termination of the Service. Late payment may incur a \$35

administration fee. The Client agrees to pay all costs associated with collection of debts, including debt collection agency fees. Where the Client has nominated payment by credit card, they irrevocably authorise Pep Talk to debit the subscribed fees for the Service against Client's credit card and to disclose Client's personal and financial details to credit institutions in order to verify Client's details and to determine Client's ability to pay for the Service. Payment by direct bank or by cheque can only be accepted where prior agreement has been provided in writing by Pep Talk. Where payment method is by direct bank payment method the Client agrees to include Client's account name as known to Pep Talk in the transaction details.

7. Suspension & Termination

Where the Service has an initial agreement term and termination occurs prior to completion of this term, the Client agrees to pay PepTalk the remaining fees relevant to the Agreement for that Service. An initial term period does not apply to the Pep-Talk Everywhere product. An initial term period does not apply to the Pep-Talk Enterprise product unless specified. Pep Talk reserves the right to take action where Pep Talk believes that abuse is occurring, which may include monitoring, diminished Service, suspension, or termination of Service provided to Client and passing information to law enforcement agencies where it is lawful and appropriate to do so. Force Majeure shall not avoid liability for the Agreement or termination. Without limiting the rights which the Client and Pep Talk may otherwise have arising from a breach of this Agreement, the party not in default may terminate the Agreement immediately by notice to the other in writing if:

- a) the Client or Pep Talk breach any clause of this Agreement; or
 - b) the Client or Pep Talk become subject to any form of insolvency administration; or
 - c) the Client or Pep Talk, being a partnership, dissolve, or resolve to dissolve, or are in jeopardy of dissolving; or
 - d) the Client or Pep Talk, being a natural person, die; or
 - e) the Service becomes unavailable for a period in excess of one month,
- either party may terminate this Agreement immediately by notice to the other party. No refund will be given upon termination.

8. Force Majeure

Where a party is unable, wholly or in part, by reason of an event of Force Majeure, to carry out any obligation under this Agreement and that party:

- a) gives the other party prompt notice of, and reasonably full particulars of, that event of Force Majeure and, so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- b) uses all possible diligence to remove that event of Force Majeure as quickly as possible, that obligation is suspended so far as it is affected by, and during the continuance of, that event of Force Majeure.

9. Privacy and Security

Only to the extent permitted by law and required to meet any applicable regulatory obligations and to the extent necessary for the purposes of providing the Service to the Client, Pep Talk may monitor, record and store any information or communications transmitted, received or stored by the Client. Pep Talk may not monitor, record or store any such information for any other purpose. Pep Talk will treat the information as confidential and will comply with the Privacy Act, and any privacy policies of the Client notified to Pep Talk, in relation to that information and will not without the Client's prior written consent disclose such confidential information to a third party except where required by law or contemplated by this Agreement. Pep Talk will use reasonable endeavours to secure the data from unauthorised access and will require its employees who have access to the data to execute non-disclosure agreements. Pep Talk's obligation under this clause shall survive the termination of this Agreement.

10. Confidentiality

If during the performance of its obligations under this Agreement either party ("the Receiving Party") is exposed to any information of the other ("the Disclosing Party") which the Disclosing Party identifies as being of a confidential or sensitive nature, or information which the Receiving Party ought reasonably to know is of a confidential or sensitive nature, the Receiving Party shall keep such information confidential and will not use it save insofar as its use is necessary in the performance of its obligation under this Agreement and the Receiving Party shall restrict dissemination of such information to its employees on a need-to-know basis.

The obligations accepted by the Receiving Party shall not apply to any material which:

- is already known to the Receiving Party, or
- is public knowledge or becomes public knowledge without fault of the Receiving Party, or
- is lawfully received from a third party, or

- is ordered to be disclosed by a court or other tribunal of competent jurisdiction.

The obligations upon the Receiving Party shall not oblige the Receiving Party to exercise a higher degree of care towards the Disclosing Party's confidential information than it does towards its own information of a like nature. Pep Talk's technical and marketing information is 'confidential information' for the purposes of this clause.

11. Rights

Pep Talk reserves all rights and ownership of the products Service provided including intellectual property, designs, drawings, documentation, layouts, trademarks, patent and copyright. Pep-Talk is a patent and trademark of Skunkworks Australia Pty Ltd licensed to Pep Talk. The Client must not attempt, or allow, or cause a third party to decompile, disassemble, reverse engineer, copy, reproduce, transmit or modify the software in whole or in part. All Pep-Talk related content and images served onto public web pages shall be served exclusively by Pep Talk. In case of doubt these rights include the Pep-Talk Everywhere and Pep-Talk Enterprise browser interface or console layouts, processes and methods used to provision, configure, and manage Pep-Talk users, partners and resellers, and services including abuse controls and reporting.

12. Support for Pep-Talk Everywhere Service

Unless custom support has been agreed by both parties, support for the Pep-Talk Everywhere product is by email only to support@pep-talk.com.au. Support is included in the subscribed Service however does not extend to Client's environment unless by mutual prior agreement. Custom support is available on request.

13. Support for Pep-Talk Enterprise Service.

Unless custom support has been agreed by both parties, support is provided for the Pep-Talk Enterprise product between the hours of 8:30am to 5:30pm Monday to Friday Australian Eastern Standard Time. Support by email provides limited 24 hour service with high priority restoration provided to issues impacting performance and or outages. Support is included in the subscribed service however does not extend to Client's environment unless by mutual prior agreement. Custom support is available on request.

14. Miscellaneous

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.