

End User Terms

Effective Date: 14 August 2017

Your use of the MeldCX Software (including but not limited to all software preinstalled/resident on devices and software downloaded onto your hardware, which you may use to access the MeldCX Software, and MeldCX related products, including all software referred to as *agentM*) is subject to the terms and conditions contained in this document as well as MeldCX's Privacy Policy (available at www.meldcx.com/privacypolicy) and any other rules and policies relating to the MeldCX Software that MeldCX may publish from time to time (collectively, the **Terms**). These Terms may be updated from time to time and are available at www.meldcx.com/EndUserTerms.

By clicking or tapping "ACCEPT", you indicate your acceptance of these Terms, as amended from time to time.

1. MeldCX Software Licences

2. **Licence to use MeldCX.** Subject to these Terms, we grant to you a limited, non-exclusive, non-transferable licence, without the right to sublicense, to use the MeldCX Software in accordance with these Terms solely for your business purposes.

3. Privacy and Confidentiality

4. **Privacy.** The parties will, in performing their respective obligations under these Terms, comply with Australia's *Privacy Act 1988* (Cth) (the **Act**), and neither party will put the other in breach of the Act. In the course of using the MeldCX Software, you may load content to the MeldCX Software (including your personal information and the personal information of others) or third parties may submit content to you through the MeldCX Software (your **Output**).

Where you submit personal information of third parties to MeldCX, you must:

- a. ensure that you are entitled to transfer the relevant personal information to MeldCX so that MeldCX may lawfully use, process and transfer the personal information in accordance with MeldCX's Privacy Policy; and
 - b. ensure that the relevant third party has been informed of, and has given their consent to, such use, processing and transfer of the personal information as required by all applicable privacy laws.
5. **Privacy Policy.** MeldCX's Privacy Policy details the manner in which we treat your Output and personal information and describes the key features of how we protect your personal information. We agree to adhere to our Privacy Policy. You agree that MeldCX may use and share your Output in accordance with our Privacy Policy.
 6. **Confidentiality.** MeldCX will treat your Output as confidential information and only use and disclose it in accordance with these Terms (including our Privacy Policy). Your Output is not considered to be confidential information if such Output:
 - a. is publicly available through no fault of MeldCX;
 - b. (was rightfully received by MeldCX from a third party without restriction and without breach of an obligation of confidentiality; or
 - c. was independently developed by MeldCX without reference to your Output.

MeldCX may disclose your Output when required by law (including under the rules of any stock exchange).

7. **Security.** MeldCX aims to comply with established industry practice in relation to your Output security.

8. Your Output

9. **You Retain Ownership of Your Output.** You retain all right, title and interest (including any intellectual property rights) in and to your Output. MeldCX does not claim ownership over any of your Output.

10. **Limited Licence to Your Output.** You grant MeldCX a limited, non-exclusive, royalty-free, non-transferable licence to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, and otherwise use your Output solely as necessary to provide MeldCX to you and as otherwise permitted by MeldCX's Privacy Policy. You represent and warrant that you have the rights necessary to grant MeldCX such a licence.
11. **Responsibility for Your Output.** You are solely responsible for your Output. You must ensure that you have obtained all necessary rights, releases and consents to allow your Output to be used and disclosed in the manner contemplated by these Terms and to grant MeldCX the rights herein. You will be solely responsible for the accuracy and appropriateness of your Output within MeldCX.
12. **Output Review.** You acknowledge that, MeldCX may, but has no obligation to, monitor, review or edit your Output. In all cases, MeldCX reserves the right to remove or disable access to any of your Output that, in MeldCX's sole discretion, violates the law or these Terms. MeldCX may take these actions without prior notification to you.
13. **Output Disclosure.** MeldCX reserves the right to disclose any of your Output that MeldCX deems necessary to comply with any applicable law, legal process or government request including, without limitation, account information (i.e. name, e-mail address etc), and your Output residing on MeldCX.

14. MeldCX's IP

15. **MeldCX's IP.** You acknowledge that MeldCX is the sole and exclusive owner of all intellectual property rights in the MeldCX Software. You undertake that you will not decompile, disassemble, reverse engineer, modify, enhance, change or alter the whole or any part of the MeldCX Software without the prior express written consent of MeldCX. Neither these Terms nor your use of the MeldCX Software grants you ownership in the MeldCX Software or the content you access through MeldCX (other than your Output). You acknowledge that all intellectual property rights in all materials developed, generated or prepared using the whole or any part of the MeldCX Software will vest immediately upon creation in MeldCX. You will assign to MeldCX all of your rights to or interest in any intellectual property rights comprising in any developed material that incorporates any part of the MeldCX Software. These Terms do not grant you any right to use MeldCX's trademarks, business names or logos.

16. Your Obligations and Things You Must Not Do

17. **Third Party Services.** You will establish and maintain, at your own expense, all telecommunications equipment and access lines necessary to gain access to the MeldCX Software. You acknowledge that MeldCX will not have any responsibility or liability with regard to any third party services used by you on or through MeldCX and any use of such third party services will be at your own risk. While MeldCX will use reasonable endeavours to maintain compatibility between third party services and MeldCX, MeldCX is not responsible for any incompatibility between third party services and MeldCX.
18. **Security Obligations.** You must comply with the following requirements when using the MeldCX Software:
 - a. ensure there is no unauthorised access to the MeldCX Software and must not share your password, let anyone else access your account, or do anything that might jeopardise the security of your account;
 - d. not cause harm or damage to MeldCX or our suppliers;
 - e. not use the MeldCX Software to upload, post, email, transmit or otherwise make available or initiate any Output that contains software viruses, worms, Trojan horses or any other computer code, files or programs that interrupt, destroy or limit the functionality of the MeldCX Software that may impact the ability of any MeldCX user to access the MeldCX Software;
 - f. not commit, cause or allow any breach (or do anything which might put MeldCX in breach) of any law, regulation, government direction or industry standard or code;
 - g. not use the MeldCX Software to breach a person's rights (including committing defamation or infringing a person's intellectual property rights);

- h. not attempt to or actually access the MeldCX Software by any means other than through the portals or interfaces provided by MeldCX;
 - i. not attempt to or actually override any security component included in or underlying the MeldCX Software;
 - j. not attempt or engage in any action that directly or indirectly interferes with the proper working of or place an unreasonable load on the infrastructure of the MeldCX Software; and
 - k. notify MeldCX immediately of any unauthorised access, security breach (suspected or otherwise) of the MeldCX Software, or loss or misuse of confidential password or login.
- 19. Unauthorised Access to the MeldCX Software.** You indemnify and keep MeldCX indemnified against any loss or damage (except where and to the extent that such loss or damage is consequential in nature) which MeldCX suffers as a result of any unauthorised access to the MeldCX Software or MeldCX's network or those of MeldCX's suppliers.
- 20. Limitation.** MeldCX will not be responsible or liable for any failure in the MeldCX Software resulting from or attributable to:
- a. your internet access, network, telecommunications or other service or equipment;
 - b. your, or third parties' products, services, negligence, acts or omissions;
 - c. scheduled maintenance; or
 - d. unauthorised access by third parties.

21. Suspension, Cancellation and Termination of the MeldCX Software

- 22. Suspension or Cancellation.** You agree that MeldCX may cancel your MeldCX account or suspend access to your account at any time. MeldCX will notify you of such cancellation or suspension of your account by email to the email address you provide when you register with the MeldCX Software.
- 23. Termination.** In the event that you materially defaults in the performance of any of our respective duties or obligations under these Terms and does not substantially cure such default, or commence a cure, within 30 days after being given written notice specifying the default, MeldCX may, by giving written notice to the defaulting party, terminate this Agreement. MeldCX may, by written notice to you, terminate your rights to use the MeldCX Software without liability to you, if you fail to pay the applicable fees for the MeldCX Software as set forth in the Order Form within 30 days after MeldCX gives you notice of such non-payment. Any such suspension or termination of access to the MeldCX Software does not relieve you from paying any past due amounts and any future amounts due to MeldCX through to the expiration date of these Terms or what would have been the expiration date had these Terms continued.
- 24. Effects of Cancellation and Suspension.** Upon cancellation of your account all access to the MeldCX Software will cease immediately as your account will be disabled.

25. Warranty

- 26. Warranty.** You represent, warrant and covenant to MeldCX that:
- a. your Output or its use will not violate, misappropriate or infringe any intellectual property rights or any other persona, privacy or moral right arising under the laws of any jurisdiction of any person or entity, nor will same constitute a libel or defamation or any person or entity;
 - e. your Output will not contain any harmful components, including, but not limited to, viruses, hidden sequences, hot keys or time bombs; and
 - f. you will comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws in your use of the MeldCX Software).
- 27. DISCLAIMER OF WARRANTIES.** TO THE EXTENT PERMITTED AT LAW, MELDCX EXPRESSLY DISCLAIMS ALL WARRANTIES OF

ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MELDCX SOFTWARE (INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT). MELDCX MAKES NO WARRANTY THAT THE MELDCX SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT PERFORMANCE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE MELDCX SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE ARISING THEREFROM. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM APOEN OR THROUGH MELDCX WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

28. Indemnification

29. You agree to defend, indemnify and hold harmless MeldCX, its employees and parent corporation from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:
- your breach of any of these Terms;
 - your breach of any third party right, including without limitation any intellectual property right or privacy right; or
 - any claim arising as a consequence of your Output.

30. Limitation of Liability

31. **Exclusion of Liability.** Subject to clause 11.3 and to the full extent permitted by law, neither MeldCX, nor its affiliates, will be liable to you, or your affiliates, (whether in common law, equity, contract, tort (including negligence), breach of statutory obligation or duty, for repudiation, anticipatory breach or otherwise) for:
- any special, exemplary or punitive damages;
 - loss of Output, loss of provide (except for our loss of profit as a direct loss), loss of revenue, lost opportunity, loss of anticipated savings, loss of goodwill, work stoppage or business interruption, computer failure or malfunction, economic loss, cost of management time or the cost of any third parties engaged to provide services in place of the MeldCX Software; or
 - any indirect or consequential loss, regardless whether such party has been made aware of the likelihood of such losses.
32. **Limitation of Liability.** Subject to clause 11.3 and to the extent permitted by law, MeldCX's and its affiliates' collective, cumulative liability to you (or your affiliates), for all claims arising under or in relation to these Terms, whether in common law, equity, contract, tort (including negligence), breach of statutory obligation or duty, repudiation, anticipatory breach or otherwise, will not exceed when aggregated, the actual fees received by MeldCX under these Terms for the portion of the services giving rise to such claim during the preceding 12 month period immediately preceding the date on which the most recent such claim arose (as agreed or determined by a Court).
33. **Acknowledgment of MeldCX's Liability.** Notwithstanding that clauses 11.1 and 11.2 are expressed in these Terms to apply to exclude and limit liability, nothing in this clause 11 operates to exclude or restrict MeldCX's liability under the indemnity contained in clause 10.1.
34. **Exclusion of Implied Terms and Limitation.** Nothing in these Terms will operate so as to exclude, restrict or modify the application of any of the provisions of the *Competition and Consumer Act 2010* (Cth) or any equivalent State or Territory legislation (**Relevant Legislation**), the exercise of a right conferred by such a provision, or any liability of a party for a breach of a condition or warranty implied by such a provision, where the Relevant Legislation would render it void to do so. To the extent that it is able to do so, MeldCX expressly limits its liability for breach of any condition or warranty implied by virtue of any Relevant Legislation to:
- in the case of goods, at MeldCX's option, replacement or repair of the goods or the cost of doing so; and

b. in the case of services, at MeldCX's option, resupply of the services or the cost of doing so.

35.Changes and Updates

- 36. Changes to Terms.** MeldCX may, in its sole and absolute discretion, change these Terms from time to time. MeldCX will post notice of such changes on MeldCX's website at www.meldcx.com/legal/EndUserTerms. If you object to any such changes, your sole remedy is to cease using the MeldCX Software. By continuing to use the MeldCX Software following any such changes to the Terms you indicate your agreement to be bound by the updated Terms.
- 37. Changes to MeldCX.** MeldCX reserves the right to add, alter, or remove functionality from the MeldCX Software at any time without prior notice to you. MeldCX may also limit, suspend or discontinue the MeldCX Software at its sole discretion.

38. General Terms

- 39. Force Majeure.** MeldCX is not responsible or liable to you or any other person, firm or entity for any failure to perform any obligation under these Terms to the extent that it is caused by any act, event, omission or non-event beyond MeldCX's reasonable control, which will be deemed to include riots, war, acts of terrorism, fire, flood, storm or earthquake.
- 40. Entire Agreement.** These Terms and the documents referenced in these Terms are the entire agreement and understanding with regard to MeldCX and supersede any prior agreement or understanding on anything connected with MeldCX. You have entered into these Terms without relying on any representation by us or any person purporting to represent us.
- 41. Representations.** You acknowledge that you have relied on your own independent assessment and judgment in determining whether the MeldCX Software meets your requirements.
- 42. Assignment.** You may not assign any of your rights or obligations under these Terms without the prior written consent of MeldCX, which must not be unreasonably withheld. MeldCX may assign or novate its rights and obligations under these Terms as it may determine which assignment or novation you are deemed to have agreed to without the need for any further action on your part.
- 43. Waiver and Invalidity.** A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 44. Severability.** If any provision of these Terms is held to be invalid or unenforceable, such provision will be severed without affecting the enforceability and validity of the remaining provisions which will remain in full force and effect.
- 45. Relationship of the Parties.** You agree that MeldCX is not your employee, agent, partner, joint venturer or subcontractor in relation to your use of the MeldCX Software.
- 46. Jurisdiction.** These Terms are governed by the law in force in Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms. Any legal action in relation to these Terms shall be referred to arbitration. Such arbitration shall be held in English language in Melbourne at the Australian Centre for International Commercial Arbitration ("ACICA") and conducted in accordance with the UNCITRAL Arbitration Rules. The tribunal shall consist of 1 arbitrator to be appointed by the Chairperson of the ACICA or his/her delegate. An arbitration award shall be final and binding on the parties.

47.Contracting Entity

- 48. Contracting Entity.** References to "MeldCX", "we", "us", "our" are references to Meldcx Pty Ltd ACN 621 013 410 with offices located at Level 2, 21 Cremorne Street, Richmond VIC 312.