

End User Terms

Effective Date: 21 February 2020

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**). If software is provided for use in the United States ("US"), see the specified terms below related to the US. By placing an order, clicking to accept this Agreement, or using or accessing any meldCX service, you agree to all the terms and conditions of this End User Terms ("Agreement"). If you are using on behalf of a company or other entity, then "Customer" or "you" means that entity, and you are binding that entity to this Agreement. You represent and warrant that you have the legal power and authority to enter into this Agreement and that, if the Customer is an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement.

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.

meldCX Software Licenses

1. **License 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.

Privacy and Confidentiality

2. **Privacy.** The parties ("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 **Data**).

US Privacy: Applicable Privacy Laws and Definitions: Nonpublic personally identifiable information ("NPI") as such term is defined per the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., and its implementing regulations (the "GLBA" or any personal information ("PI") as such term is defined by the California Consumer Privacy Act of 2018, Cal. Civil Code § 1787.100 et seq., and the related regulations as amended from time to time (the "CCPA").

You agree to maintain the privacy and security of any NPI and PI, as applicable, in the manner required by the GLBA and other applicable federal and state law including by not limited to the CCPA (collectively, "Applicable Privacy Law") and, if applicable, by the Payment Card Industry Data Security Standard ("PCI DSS"). You agree to implement and maintain reasonable security measures, procedures and practices appropriate to the nature of the PI and as

required by the Applicable Privacy Laws. to protect such information from unauthorized access, destruction, use, modification or disclosure.

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.
3. **Privacy Policy.** meldCX's Privacy Policy details the manner in which we treat your Data 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 Data in accordance with our Privacy Policy.
4. **Confidentiality.**

"Confidential Information" means code, inventions, know-how, product plans, inventions, and technical and financial information exchanged under this Agreement, that is identified as confidential at the time of disclosure or should reasonably be considered confidential based on the circumstances surrounding the disclosure and the nature of the information disclosed.

meldCX will treat your Data as Confidential Information and only use and disclose it in accordance with these Terms (including our Privacy Policy). Your Data is not considered to be Confidential Information if such Data:

- 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 Data.

meldCX may disclose your Data when required by law (including under the rules of any stock exchange) to the extent required by law or court order, provided it gives advanced notice (if permitted by law) and cooperates in any effort by you to obtain confidential treatment for the information.

5. **Security.** meldCX aims to comply with established industry practice in relation to your Data security.
6. **Remedies.** You acknowledge that disclosing Confidential Information may cause substantial harm for which damages alone may be an insufficient remedy, and meldCX shall be entitled to seek appropriate equitable relief in addition to any other remedies it may have at law.

Your Data

7. **You Retain Ownership of Your Data.** You retain all right, title and interest (including any intellectual property rights) in and to your Data. meldCX does not claim ownership over any of your Data.
8. **Limited License to Your Data.** You grant meldCX a limited, non-exclusive, royalty-free, non-transferable license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, and otherwise use your Data 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 license.
9. **Responsibility for Your Data.** You are solely responsible for your Data. You must ensure that you have obtained all necessary rights, releases and consents to allow your Data 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 Data within meldCX.

10. **Data Review.** You acknowledge that, meldCX may, but has no obligation to, monitor, review or edit your Data. In all cases, meldCX reserves the right to remove or disable access to any of your Data that, in meldCX's sole discretion, violates the law or these Terms. meldCX may take these actions without prior notification to you.
11. **Data Disclosure.** MeldCX reserves the right to disclose any of your Data 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 Data residing on meldCX.

meldCX's IP

12. **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 Data). 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.

Your Obligations and Things You Must Not Do

13. **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 endeavors to maintain compatibility between third party services and meldCX, meldCX is not responsible for any incompatibility between third party services and meldCX.

No Third-Party Beneficiaries. These Terms are binding upon, and inures solely to the benefit of, the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to these Terms.

14. **Security Obligations.** You must comply with the following requirements when using the MeldCX Software:
 - a. ensure there is no unauthorized access to the meldCX Software and must not share your password, let anyone else access your account, or do anything that might jeopardize the security of your account.
 - b. not cause harm or damage to meldCX or our suppliers.
 - c. not use the meldCX Software to upload, post, email, transmit or otherwise make available or initiate any Data 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;
 - d. 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.
 - e. not use the meldCX Software to breach a person's rights (including committing defamation or infringing a person's intellectual property rights).

- f. not attempt to or actually access the meldCX Software by any means other than through the portals or interfaces provided by meldCX.
 - g. not attempt to or actually override any security component included in or underlying the meldCX Software.
 - h. 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
 - i. notify meldCX immediately of any unauthorized access, security breach (suspected or otherwise) of the meldCX Software, or loss or misuse of confidential password or login.
15. **Unauthorized 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 unauthorized access to the meldCX Software or meldCX's network or those of meldCX's suppliers.
16. **Confidentiality Obligation.** You must: (i) hold in confidence and not disclose our Confidential Information to third parties except as permitted by this Agreement; and (ii) only use our Confidential Information to fulfill obligations and exercise its rights under this Agreement.
17. **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. unauthorized access by third parties.

Suspension, Cancellation and Termination of the meldCX Software

18. **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.
19. **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.
20. **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.

Warranty

21. **Warranty.** You represent, warrant and covenant to meldCX that:
- a. your Data 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 of any person or entity;

- b. your Data will not contain any harmful components, including, but not limited to, viruses, hidden sequences, hot keys or time bombs; and
- c. 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).

22. **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. YOU ACKNOWLEDGE THAT YOU HAVE NOT RELIED ON ANY REPRESENTATION, WARRANTY, OR STATEMENT MADE, EXCEPT AS SET FORTH HEREIN.

Indemnification

23. 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:
- a. your breach of any of these Terms.
 - b. your breach of any third party right, including without limitation any intellectual property right or privacy right; or
 - c. any claim arising as a consequence of your Data.

Limitation of Liability

24. **Exclusion of Liability.** 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:
- a. any special, exemplary or punitive damages.
 - b. loss of Data, loss of profit (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
 - c. any indirect or consequential loss, regardless whether such party has been made aware of the likelihood of such losses.

25. **Limitation of Liability.** 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).
26. **Acknowledgment of meldCX's Liability.** Notwithstanding that clauses 25 are expressed in these Terms to apply to exclude and limit liability, nothing in clause 25 operates to exclude or restrict meldCX's rights to indemnity contained in clause 23.
27. **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:
- a. 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.

Changes and Updates

28. **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.
29. **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.

General Terms

30. **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.
31. **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.

32. **Representations.** You acknowledge that you have relied on your own independent assessment and judgment in determining whether the meldCX Software meets your requirements.
33. **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.
34. **Publicity.** Customer is permitted to state publicly that it is a customer of meldCX, consistent with the Trademark Guidelines. If Customer wants to display meldCX Brand Features in connection with its use of meldCX Software, Customer must obtain written permission from meldCX. meldCX may include Customer's name or Brand Features in a list of meldCX customers, online or in promotional materials. meldCX may also verbally reference Customer as a customer of its software. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously approved public statement. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.
35. **Export.** Customer is responsible for obtaining any required export or import authorizations for use of the meldCX software. Customer represents and warrants that it, its affiliates, and its authorized users are not on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country. Customer must not access or use the meldCX software in violation of any U.S. export embargo, prohibition or restriction.
36. **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.
37. **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.
38. **Relationship of the Parties.** You agree that meldCX is not your employee, agent, partner, joint ventures or subcontractor in relation to your use of the meldCX Software.
39. **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.

US Jurisdiction: These Terms shall be governed and construed in accordance with the laws of the State of Delaware

without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms. Any controversy or claim between or among the parties relating to this Agreement shall be determined by arbitration in accordance with the Commercial Dispute Resolution Rules of American Arbitration Association (“AAA”) and before a single arbitrator selected according to AAA rules. Any such arbitration hearing shall be held in Delaware unless the parties mutually agree otherwise, and the cost of the arbitration shall be shared equally by the Parties. An arbitration award shall be final and binding on the Parties.

Contracting Entity

40. **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 and/or 11801 Domain Blvd 3rd Floor, Austin, TX 78758