

V20240306-V1-00

Purpose

The MedView Server service is designed to provide a reliable server on a rental basis for the purpose of storing all business data and managing the customer's network.

Summary

Customer Obligations

- The Equipment (which includes the software) remains the property of MedView. The Equipment cannot be sold, leased, licensed, disposed of, or in any way altered, changed or enhanced without MedView's prior written approval.
- The Total Monthly Rental Payment will be payable by direct debt 3 months in advance. Your invoice will be emailed to your nominated address.
- All software licenses provided under this agreement are provided for use with your business by the nominated maximum number of users detailed in your Quotation. You may not copy, install or distribute the software to any third party without the prior written approval of MedView.
- Microsoft may if it gives prior notice conduct a compliance visit at your business premises during business hours.
- The Customer will ensure their internet meets the requirements to provide a reliable service.

MedView Obligations

- MedView Services Pty Ltd ABN 62 132 884 658 shall supply and maintain functional and reliable HP (or equivalent) server hardware and Microsoft server software for the duration of this Rental Agreement for the purpose of storing all business data and managing the network. This will be maintained in line with the information provided within this Service Level Agreement.
- Based on the information provided by you in respect of your business and our analysis of your requirements we will initially supply the Equipment described in your Quotation.
- In order to efficiently provide and maintain the Equipment, MedView reserves the right, in its discretion, to upgrade and replace hardware, and upgrade software to current releases.
- All updates to the server released by Microsoft during the Term will be applied.
- MedView will have access to, and provide Internet based remote management of the server, including monitoring logs and viewing daily reports.

Should your business requirements change dramatically over time or deviate significantly from that advised to us, we reserve the right to change the configuration of the Equipment and re-quote the Total Monthly Rental Payment.

Service Conditions

- MedView is the owner of the Equipment. You only have the right to use it.
- MedView will not provide administrative access to the server for customers or third-parties.
- MedView reserves the right to refuse installation of third-party software or services where the installation may compromise the performance or reliability of the server.

MedView Commitment

MedView understands that the server is integral to your business. With this in mind, our maintenance and support of the server includes the following.

Services

- Telephone & Remote Connection Support
MedView will provide telephone technical support and have remote connection access to the server to ensure the server operates to meet the business requirements.
- Monitoring & Maintenance Support
MedView will monitor and respond to any critical alerts reported by the server's automatic notification process.
- On Site Support
MedView will provide onsite service in the event of a critical event or where remote access is unable to resolve an issue related to the server.

Response Times

In the event of the need for a site visit to resolve a critical issue, MedView will aim to be on site within four normal business hours of the problem being reported to the on-site technical team.

Non-Metropolitan Sites

Non-metropolitan sites are offered all services outlined above, with the exception of the onsite response time being four normal business hours plus any required travel time to site from the nearest MedView office.

Charges

There are no additional charges for the provision of services as outlined above for metropolitan sites (within 50 km radius of capital city GPO). Non-metropolitan sites will be charged travel and accommodation at the standard MedView rates where required.

Service Summary

Details of the MedView's Service Summary can be found here - [MedView Service Summary – Knowledge base](#)

Detailed Contract Information

1. Ownership of Equipment

- a. We are the owner of the Equipment. You only have the right to use it.
- b. For the purposes of this Rental Agreement, Equipment includes all the hardware and software that we supply to you whether or not it is listed in your Quotation.
- c. You must protect our ownership of the Equipment and not attempt to sell, lease, license, dispose of or deal with it in any way.

2. Entire Agreement

- a. The entire Rental Agreement between you and us consists of this Service Level Agreement, the Quotation and the Direct Debit Request.
- b. This Rental Agreement cannot be cancelled or terminated except in accordance with its terms.
- c. Any brochures and marketing material you may have seen are provided for your information only and do not form part of this Rental Agreement.

3. Disclaimer of Warranties

- a. Upon delivery of the Equipment you must inspect it and satisfy yourself that it is in good operating order and condition.
- b. You must rely on your own judgment as to:
 - i. the quality and condition of the Equipment and its fitness and suitability for any particular purpose; and
 - ii. the performance of services provided by third parties.
- c. Nothing in this Rental Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited and that includes the consumer guarantees that may apply by application of the Competition and Consumer Act 2010 (Cth) Schedule 2 'Australian Consumer Law' (**ACL**), to the goods and services that you acquire from us.
- d. If we are liable for a breach of a condition or warranty implied by the ACL, our liability for the breach will be limited to one of the following as determined by us:
 - i. in the case of goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
 - ii. in the case of services: the supplying of the services again; or the payment of the cost of having the services supplied again.
- e. Subject to clauses 3c and 3d all warranties and conditions in any way relating to the Equipment and the provision of any services pursuant to this Rental Agreement whether express or implied are expressly excluded to the extent that the goods and/or services are not of a kind ordinarily acquired by you as a consumer within the meaning of the ACL.
- f. To the extent permitted by law we shall not be liable for any indirect or consequential damage, loss of income, loss of profit or interruption of business that you suffer, pay or otherwise incur and which arises out of or relates to this Rental Agreement.
- g. No salesman or agent of the seller of the Equipment is authorised to change any term of this Rental Agreement or to make any warranties or representations about it, oral or otherwise.

4. Term of Contract

Unless otherwise stated the Term of the contract is 36 months from the time the equipment is installed. You will be contacted within at least 60 days before the end date and offered the opportunity to renew or discontinue the agreement.

5. Payments

- a. You must pay to us the Total Monthly Rental Payment shown in the Quotation each quarter for the Term.
- b. Total Monthly Rental Payments are due quarterly in advance on the applicable Payment Date shown in the contract.
- c. If a Payment Date falls on a weekend or public holiday, payment is due on the next business day.
- d. Unless we otherwise agree, all payments must be made by direct debit from your bank account or credit card.
- e. If this Rental Agreement is duly terminated under its terms, you will be credited for the pro-rata period remaining in the Term.
- f. If there is any change to the amount of stamp duty or GST payable or if any other taxes or government charges become payable in respect of this Rental Agreement, you agree that we may adjust the Total Monthly Rental Payment accordingly.
- g. You are unconditionally bound to pay all amounts due under this Rental Agreement in full without set-off or counterclaim, and without any deduction in respect of taxes, unless prohibited by law, on any account whatsoever. This obligation continues even if the Equipment is lost, stolen, damaged or destroyed (see clause 24).

6. Use and Maintenance of Equipment

- a. You must keep the Equipment in good repair, condition and working order, normal fair wear and tear excepted.
- b. You must use, service and maintain the Equipment in accordance with the manufacturer's instructions and recommendations.
- c. You may modify the Equipment only with our written consent.
- d. You may use and continue to use the Equipment at the business address noted in your Quotation for the purpose stated in the Summary whilst this Rental Agreement remains in place.

7. Location and Inspection

- a. You must not remove the Equipment from the business' address noted in your Quotation without our prior written consent, which consent may at our discretion be reasonably withheld.
- b. You agree to provide our authorised agents and us with reasonable access to inspect the Equipment to confirm its existence, condition and proper maintenance.
- c. If you fail to provide access to us and/or our authorised agents, we have the right, subject to compliance with any applicable law, to enter the premises or authorise our agents to enter the premises, where we believe the Equipment is located in order to confirm its existence, condition and proper maintenance.
- d. You are liable for and shall indemnify us (as a continuing indemnity) and against all damages, actions, suits, liabilities, penalties, claims and demands (including reasonable legal fees and expenses) suffered, paid or otherwise incurred by us (including our authorised agents) in exercising our rights under clause 7(c), except to the extent caused or contributed to by our negligent, reckless or wilful acts or omissions.

8. Payments Owed to us

- a. Time shall be of the essence in respect of the payment by you of amounts due to us.
- b. If you fail to pay any amounts due to us, and this amount remains outstanding for more than 5 business days, then we may by written notice immediately:
 - i. terminate this Rental Agreement;
 - ii. demand immediate delivery of the Equipment to us at any place we nominate in Australia;
 - iii. institute legal action for recovery of all outstanding amounts and costs due to us or otherwise suffered, paid or incurred by us including the recovery of the Equipment if it has not been delivered to us.

9. Termination

This Rental Agreement will terminate prior to the expiration of the Term upon the occurrence of any of the following events:

- a. if we give you a written notice under clause 8(b);
- b. if we terminate it in accordance with the general law;
- c. if you suffer or become subject to an Insolvency Event; or
- d. you provide notice of termination under clause 18.a.

10. Consequences of Early Termination

If this Rental Agreement is terminated under clause 9 then you must:

- a. pay a discharge fee representing our costs to remove the Equipment and otherwise end the arrangement; or
- b. at your expense immediately deliver the Equipment to us at any place we nominate in Australia.

We may at any time thereafter institute legal action for recovery of all outstanding amounts and costs due to us or otherwise suffered, paid or incurred by us including the recovery of the Equipment if it has not been delivered to us.

11. Return of Equipment

- a. On termination of this Rental Agreement, you must return the Equipment at your expense to a place within Australia that we nominate. The delivering of the Equipment includes all software specified in this Rental Agreement, all CDs, DVDs, accessories and manuals, in as good condition as the Equipment was delivered to you, except for normal fair wear and tear.
- b. It is your responsibility to remove and otherwise erase any personal data and software not specified in the Rental Agreement that is stored on or in the Equipment before returning it to us. If we have to remove and otherwise erase such information you agree to pay us for doing so in accordance with clause 11(e).
- c. We shall not be liable for any loss or damage of any nature whatsoever that arises out of or relates to your failure to remove such information from the Equipment.
- d. If any Equipment is returned to us other than in accordance with clause (a), you must pay to us the difference between the fair market retail value of the Equipment as returned to us and the fair market retail value of the Equipment as it should have been returned to us.
- e. If any Equipment is returned to us other than in accordance with clause (b), you must pay to us, calculated at our

standard rates, for our services required to remove any personal data in accordance with clause (b).

12. Repossession of Equipment

- a. If you fail to pay any Total Monthly Rental Payment or if you fail to return the Equipment when you are required to do so under this Rental Agreement, in addition to our other rights, we or our authorised agents may, subject to complying with any applicable law, take all necessary steps to enter any premises where we believe the Equipment may be located and repossess the Equipment.
- b. Subject to complying with any applicable law, we may sell any repossessed Equipment at any time.
- c. If we have not terminated this Rental Agreement, you may collect the Equipment from us only if you have paid all amounts payable under this Rental Agreement (including any amounts owing clause 15(a)).

13. End of Term Options

- a. At any time not earlier than 6 months (and not later than 30 days) prior to the expiry of the Term, we will contact you to arrange for:
 - i. the removal of the Equipment; or
 - ii. if you choose to renew in accordance with clause 4, the entry into a new contract for the supply of the Equipment.
- b. You may not purchase the Equipment at the end of the Rental Agreement.

14. Assignments

- a. You acknowledge that we may sell, assign or otherwise dispose of or deal with our interest in the Equipment and this Rental Agreement to:
 - i. any of our related bodies corporate (as defined in the Corporations Act 2001 (Cth)), by written notice to you; or
 - ii. any third party, upon obtaining your written consent to do so.
- b. You may apply to transfer this Rental Agreement to a third party but you acknowledge that we are not obliged to agree to this transfer.

15. Costs, Indemnities and Commissions

- a. You must pay or reimburse us for:
 - i. all taxes (including GST) and stamp duties payable in connection with this Rental Agreement; and
 - ii. any expenses we reasonably incur in enforcing this Rental Agreement or incur because you have repudiated, terminated or breached this Rental Agreement including, without limitation, any legal costs and expenses, costs incurred in repossessing or attempting to repossess the Equipment and costs incurred in storing and disposing of the Equipment.
- b. You are liable for and shall indemnify us (as a continuing indemnity) against all damages, actions, suits, liabilities, penalties, claims and demands (including reasonable legal fees and expenses) for any loss, damage or injury to any person (including you) or property (including your property) that is suffered, paid or otherwise incurred by us (including our authorised agents) and that is caused by the Equipment or the use of the Equipment (whether by you or anyone else), except to the extent caused or contributed to by our negligent, reckless or wilful acts or omissions.
- c. You agree that we may pay commissions or fees to any broker, agent, dealer or other person who introduces you to us or us to you.

16. Severability

If:

- a. the Consumer Credit Code ("Code") or any other law would otherwise make a provision of this Rental Agreement illegal, void or unenforceable in any jurisdiction; or
 - b. a provision of this Rental Agreement would otherwise contravene a requirement of the Code or impose an obligation or liability which is prohibited by the Code or any other law,
- this Rental Agreement is to be read as if that provision were varied to the extent necessary to comply with the Code or that other law or, if necessary, omitted, without affecting the continued operation of the rest of this Rental Agreement in that jurisdiction or any other jurisdiction.

17. Notices

- a. You must tell us if you change your bank account or credit card details, your business, postal or email address, or if you think there is any information that we should be aware of about your ability to comply with this Rental Agreement.
- b. We can give you notice by delivering it to you personally or leaving it at, or sending it by post, facsimile or email to your home, business, postal or email address last known to us. An email notice shall be valid if not returned.
- c. You consent to us and our related bodies corporate sending commercial electronic messages to you.

18. Changes to these Terms and Conditions

- a. We may change these Terms and Conditions at any time by giving you not less than 30 days' notice. Should you disagree with the change proposed, you may terminate this Rental Agreement during the above notice period in accordance with clause 9.d. If you do not provide any response to the change, it will take effect after 30 days.
- b. Any change shall not affect the amount of the Total Monthly Rental Payment (except as permitted in accordance with clause 5(f)) and shall only apply to obligations arising after the expiry of the notice period.

19. Fees

- a. We reserve the right to charge fees for services we provide.
- b. Fees will be charged at our standard rates applicable from time to time.

20. Governing Law

- a. This Rental Agreement is governed by the laws of the State of Victoria.
- b. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

21. Joint and Several Obligations

If "you" comprise more than one person then "you" means each of you separately and all of you jointly.

22. Loss or Damage

- a. You assume and bear the risk of loss or damage to the Equipment. If the Equipment is lost or damaged you agree to replace or repair the Equipment at your cost, and to continue to pay the Total Monthly Rental Payments in accordance with clause 5.
- b. You agree to indemnify us (as a continuing indemnity) for any loss or damage to the Equipment, except to the extent caused or contributed to by our negligent, reckless or wilful acts or omissions.

23. Insurance

- a. You may at any time during the Term of the Agreement be required to produce documentary evidence suitable to our reasonable requirements that you have insured (including having paid the full premiums required by such insurer);
 - i. the Equipment against loss and all other normally insured risks for its full replacement value during the Term; and
 - ii. for public and products liability insurance for at least \$20 million, which insurance policies must:
 1. have initial currency for at least 12 months and be maintained continuously throughout the Term and for a period of 1 year after the Rental Agreement has ended;
 2. be endorsed by the insurer to ensure that we are noted as a named insured;
 3. waive all rights of subrogation against us;
 4. include a cross liability clause under which the insurer agrees that:
 - a. the term "Insured" in the policy applies to each person named in the policy as if a separate policy of insurance issued to each of them; and
 - b. any non-disclosure for breach of policy conditions by one insured does not prejudice the right of the other insured to claim under any insurance.
 5. include a clause providing that the policy will not be brought into contribution with another policy of insurance covering the same risks.
- b. You must provide us with evidence that these policies of insurance are current and in existence if we ask for it.
- c. You must not do, or fail to do, anything which would allow the insurer to refuse or reduce a claim; nor can you enforce, conduct, settle or compromise any claim without our consent.
- d. You must ensure that the amount under each policy of insurance taken out by you pursuant to this Rental Agreement is increased to allow for any GST payable on receipt of a payment under the insurance policy so that the amount that would have been received had GST not been payable, is retained.

24. Incident Notification and Basis of Settlement

- a. If any Equipment is stolen or vandalised, you must promptly inform the police and promptly provide us with a copy of the police report.
- b. In our absolute discretion, we may:
 - i. repair the damaged Equipment;
 - ii. replace the stolen, lost or damaged Equipment with equipment of similar age, original specifications (excluding modifications) and condition, but this may not necessarily be the same make or model; or
 - iii. choose to release you from your future obligations under this Rental Agreement, except for any payments in

arrears at the time the loss or damage occurred.

- c. We reserve the right to choose any suitably qualified repairer to carry out repairs or any suitable supplier to replace the Equipment.
- d. Unless we release you from your obligations under paragraph 24b.iii, you must continue to pay Total Monthly Rental Payments in accordance with clause 5.

25. GST

- a. If GST is or will be imposed on a supply made under or in connection with this Rental Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this document is not expressly stated to already include an amount in respect of GST on the supply:
 - i. increase the consideration otherwise provided for that supply under this Rental Agreement by the amount of that GST; or
 - ii. otherwise recover from the recipient (in cash) the amount of that GST within 14 days of the day that the supplier gives written notice to the recipient.
- b. The recovery by the supplier of any amount in respect of GST under this Rental Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.
- c. Subject to clause 25a costs required to be reimbursed or indemnified under this Rental Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

26. Dictionary

Insolvency Event means the occurrence of any one or more of the following events in relation to you:

- a. an order is made to appoint a liquidator or provisional liquidator;
- b. an order is made for your winding up or dissolution;
- c. an application is made to a court for an order described in paragraphs (a) or (b) of this definition and that application is not withdrawn or discharged within 21 days;
- d. a receiver, receiver and manager, liquidator, provisional liquidator or administrator is appointed (whether or not under an order);
- e. (being an individual) becoming bankrupt;
- f. entry by you into any arrangement, or compromise with, or assignment for, the benefit your creditors;
- g. (being a company) you become an insolvent under administration which for the purposes of this clause has the meaning it has in the Corporations Act 2001;
- h. you are unable to pay your debts other than a debt or claim the subject of a bona fide dispute;
- i. (being a company) as a result of the operation of section 459F(1) of the Corporations Act 2001 you are taken to have failed to comply with a statutory demand; or
- j. a notice is issued under section 601AA or 601AB of the Corporations Act 2001 and not withdrawn or dismissed within 21 days.