

## HARMONY SOFTWARE LICENSE AGREEMENT – HSLA

### 1. Definitions.

In this Agreement, "we" and "us" mean Compsys Pty Ltd (ACN 008 584 950) trading as Harmony Web ("**Compsys**").

"AUP" means the Acceptable Use Policy contained in Scheduled B.

"HSLA" means the Harmony Software License Agreement.

"Licensed Software" means Harmony Web.

"Licensee" means the End User Customer utilising the Software Application Program referred to as "Harmony".

"License Subscription Date" means the date the initial Invoice is issued to the Licensee.

"Renewal Term" means any Term subsequent to the Initial Term, which renews automatically unless either party has terminated this Agreement or has given 30 days written notice of their intention to terminate this Agreement.

"Initial Term" means the initial period of the Services as specified on the first invoice issued to the Licensee by Harmony.

"Service(s)" means those services named in the attached Schedule A.

"Start Date" means the date the Licensee subscribed to start using the Services, and as indicated on the first software subscription invoice issued to the Licensee by Harmony.

### 2. License and Title

- 2.1. Compsys grants the Licensee a nonexclusive, non-transferable, subscription based license (the "License") to use the Harmony computer software ("Licensed Software"), the printed materials and online or electronic documentation (the "Documentation") for its own internal business purposes, subject to the terms of this Agreement.
- 2.2. The Licensee agrees not to rent, lease, sublicense, time-share, or otherwise distribute the Licensed Software, or to host applications to provide service bureau, time-sharing, or other computer services to third parties. The Licensee agrees not to reverse-engineer, decompile, disassemble, modify, create derivative works of, or copy the Licensed Software. The Licensee agrees to take appropriate actions to protect the Licensed Software and all parts thereof from unauthorised copying, modification, or disclosure by its agents, employees, or customers.
- 2.3. The Licensee must not assign or otherwise transfer such party's rights or obligations under this Agreement (including all attachments hereto) without the prior written consent of Compsys. Compsys may assign its rights and obligations under this Agreement (including all attachments hereto) at any time.
- 2.4. The Licensee may not access the Service if the Licensee is a direct competitor of Harmony, except with prior written consent from Compsys. In addition, the Licensee may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- 2.5. The Agreement is effective from the License Subscription Date and will remain in force until terminated as described in Clause 13.

- 2.6. All right, title and interest in and to the copyrights, trademarks, patents, trade secrets and other intellectual and proprietary rights in the Licensed Software provided under this Agreement (the “Compsys Intellectual Property”) are and shall remain vested with Compsys and/or Compsys suppliers. For the avoidance of doubt, in no event shall Compsys Intellectual Property include any data or other proprietary information of the Licensee.

### **3. Services**

- 3.1. The services available to the Licensee under this Agreement are as detailed in Schedule A to this Agreement.
- 3.2. This Agreement is intended to permit the Licensee to use the services it subscribes to with Compsys. It is for the exclusive use of the Licensee and does not extend to any other person or entity. The Licensee is responsible for the use of the Services and is bound by the terms of this Agreement. The Licensee agrees to abide by any Acceptable Use Policy published by Compsys (attached herein as Schedule B), which is subject to change without notice. The Acceptable Use Policy is developed to ensure a high quality of service for all users of the Services.
- 3.3. The use of the Service by the Licensee is at the Licensee’s sole and absolute risk. COMPSYS SPECIFICALLY DISCLAIMS AND DENIES ANY RESPONSIBILITY FOR THE COMPLETENESS, ACCURACY OR QUALITY OF THE SERVICES PROVIDED BY US UNDER THE TERMS OF THIS AGREEMENT.

### **4. Licensee Obligations and Use of Service**

- 4.1. Any use of the Service by the Licensee that is in violation of the Acceptable Use Policy (AUP) or disrupts the normal use of the system for other Compsys customers is considered to be an abuse of the system. Compsys reserves the right to update the policy periodically and the Licensee accepts full responsibility to remain familiar with and abide by any and all Licensee obligations stated therein.
- 4.2. The Licensee is required to maintain secure passwords for use of the Service.
- 4.3. The Licensee shall not use any process, program or tool via Compsys system for guessing the passwords or circumventing any security measures of Compsys customers or other systems. The Licensee shall not use Compsys systems to make unauthorised attempts to access the systems and networks of others.
- 4.4. The Licensee shall use the Service in accordance with all applicable state and federal laws, including but not limited to, privacy laws. The Licensee shall not use the Service to conduct any business or activity or solicit the performance of any activity that is prohibited by law, nor shall the Licensee’s use of the Service impinge upon the use of the system by other customers.
- 4.5. Violations of the Compsys AUP are unethical and may be deemed criminal offenses. The Licensee shall report to Compsys any information the Licensee may have concerning instances in which the AUP has been or is being violated. When Compsys becomes aware of any possible violations, Compsys will initiate an investigation.

### **5. Compsys Obligations**

- 5.1. Compsys commits that the Service will be available for use by the Licensee and that the hosting infrastructure used to provide the service will provide commercially reasonable levels of data back up and security.
- 5.2. Availability. Subject to any provisions already stated, Compsys aims to maintain an industry acceptable availability during normal business hours. Compsys will take reasonable steps to ensure that unexpected downtime is limited during any period within business hours. This

excludes mutually agreed outages for the purpose of any Compsys approved and planned maintenance, upgrades or backups.

- 5.3. Compsys commits that it will at all times be compliant with state and federal laws, including but not limited to, privacy laws.
- 5.4. Compsys will ensure the Service complies with Australian government Child Care Management System (CCMS) specifications and mandatory requirements.
- 5.5. Compsys commits to provide help desk support in a timely and responsive manner. Contact can be made during normal business hours, excluding public holidays. Where an issue cannot be resolved on the same day, Compsys will keep the Licensee informed of its plan to resolve the matter.

## **6. Billing and Fees**

### **6.1. Billing.**

- (a) Licensees who subscribe to the Services will be deemed to be customers of Compsys from the Start Date. Accordingly, all Compsys operating procedures concerning customer applications, customer service, and sales will apply to the Licensee from the Start Date. Compsys may change its policies and operating procedures from time to time.
- (b) Compsys will Invoice the Licensee for the agreed upon Initial Term in advance of the Service being provided. The Initial Term will be for the provision of the Service on a monthly or annual basis, or as agreed between the parties. Payment of the initial invoice, and any subsequent invoice, or downloading, installing, accessing or using the Service will constitute acceptance of the terms contained in this Agreement.
- (c) The Licensee must effect payment of the Invoice within seven (7) days of the date of the Invoice ("Due Date").
- (d) Once the Initial Term has lapsed, and this Agreement has not been terminated and no party has given 30 days written notice of their intention to terminate this Agreement, Compsys will automatically Invoice the Licensee for subsequent Terms ("Renewal Term").
- (e) In the event the Licensee fails to make full payment of the Invoice by the Due Date, Compsys may suspend the Service to the Licensee. Such suspension may be rescinded by Compsys at the sole discretion of Compsys upon payment in full of the Licensee's account.

### **6.2. Fees.**

- (a) In consideration of the Service provided, the Licensee shall pay Compsys those fees itemised on any valid Tax Invoice issued to the Licensee for the Service, including mutually-agreed in advance supplemental charges, such as charges for incremental usage, design changes/customisation, maintenance and expedites requested by the Licensee.
- (b) Compsys may vary its fee schedule from time to time.

## **7. Start of Service**

Compsys will deem the License Subscription Date to be the Start Date for the Service. In no event will the non-operation of Licensee Facilities alter the Start Date.

## **8. Warranties**

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **9. Quality and Accuracy of Available Information**

The Licensee acknowledges that the information available via the Compsys system and/or through the interconnecting networks may not be accurate. Compsys makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy or validity of the data and/or information available from or through such networks. Use of information obtained from or through the Compsys system is at the Licensee's risk.

## **10. Indemnity and Limitation of Liability**

### **Infringement Indemnity.**

- 10.1. Compsys will defend, indemnify and hold the Licensee harmless from all damages, awards, and costs (including reasonable solicitors' fees) to the extent resulting from or arising out of any claim or action that alleges the Compsys Software directly infringes an Australian intellectual property right, or constitutes misappropriation of a third party trade secret; provided, however, that the Licensee promptly notifies Compsys in writing of such claim or action, reasonably cooperates with Compsys in its defence or settlement, and Compsys has sole control of the defence and all related settlement negotiations.
- 10.2. In the event Compsys Software becomes, or in the opinion of Compsys is likely to become, the subject of any claim or action, then Compsys will use commercially reasonable efforts at its sole option and expense, to:
  - (i) procure the right for the Licensee to continue using the Compsys Software;
  - (ii) replace or modify the Compsys Software so it becomes non-infringing while remaining functionally equivalent; or
  - (iii) if option (i) or (ii) is not reasonably available in Compsys judgment, Compsys may terminate the Service and Compsys will issue a refund of all fees paid by the Licensee for the remaining unused balance of the Services period at the time of termination.
- 10.3. Compsys will have no liability for any claim or action based upon:
  - (a) the combination, operation, or use of the Compsys Software with hardware, software, or other items not supplied by Compsys;
  - (b) any alteration of the Compsys Software by the Licensee or a third party; or
  - (c) any modification of the Compsys Software made by Compsys pursuant to specifications, requirements, or designs provided by the Licensee.

### **10.4. Limitation of Liability.**

COMPSYS SHALL NOT BE LIABLE TO THE LICENSEE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT. ANY COMPSYS LIABILITY TO THE LICENSEE FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL NOT EXCEED, IN AMOUNT, A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT AS DETERMINED UNDER THIS AGREEMENT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

## **11. Relationship of Parties**

Nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative or employment relationship between the parties. The Licensee will have no authority to make or accept any offers or representations on Compsys behalf. The Licensee will not make any statement, or publish any statement, that reasonably would contradict anything in this clause.

## **12. Service Suspension/Maintenance**

Compsys may from time-to-time suspend the Service for routine maintenance or rearrangement of the equipment. Compsys shall employ best efforts to provide the Licensee advance notification of the Service suspension. Such Service suspension is not considered unscheduled downtime, provided the Service is restored by the end of the period specified in the notification from Compsys. In addition, Compsys may suspend the Service of the Licensee as otherwise provided in this Agreement.

## **13. Term and Termination of this Agreement**

- 13.1. **Term of this Agreement.** This Agreement shall become effective on the License Subscription Date and shall remain in effect for the length of the Initial Term and any Renewal Terms. This Agreement and any related Schedules shall automatically renew for successive terms equal in length to the Term (the "Renewal Term(s)"), unless either Compsys or the Licensee provides written notice of termination at least thirty (30) days prior to the end of the current Term or any Renewal Term.

13.2. **Termination of this Agreement.**

- 13.2.1. Either party may terminate this Agreement at any time by giving the other party thirty (30) days' prior written notice of its intention to terminate the Agreement.
- 13.2.2. If Compsys terminates this Agreement for cause or if the Licensee terminates this Agreement without cause, the Licensee shall not be entitled to any refunds for fees paid in advance of Services. Further, the Licensee agrees to pay the balance of all billed but unpaid recurring and all outstanding non-recurring charges. The Licensee agrees the actual damages in the event of such termination would be difficult or impossible to ascertain, and that the termination charge in this Section 13.2 is intended, therefore, to establish liquidated damages and is not intended as a penalty.

## **14. Customer Data and Support**

- 14.1. **Customer data.** Compsys does not own any data, information or material that the Licensee submits in the course of using the Service ("Customer Data"). The Licensee shall have sole responsibility for the accuracy, quality, integrity, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Compsys shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any customer data. In the event this Agreement is terminated, other than by reason of the Licensee breach, Compsys will make available to the Licensee a copy of the Customer Data in a readable format within thirty (30) days of the termination if the Licensee so requests at the time of termination. The Licensee may incur an exit fee charge in the event the Licensee wishes to redeem their data.
- 14.2. **Customer Support.** Compsys support staff has the right to access Licensee data to provide support as and when required.

## **15. Force Majeure**

If Compsys performance of any obligation under this Agreement is prevented, restricted or interfered with by causes including failure or malfunction of the Licensee-supplied equipment, disruptions of Internet protocol ("IP") service through intermediate carriers other than

<http://www.childcarecentral.com.au>, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labour difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then Compsys shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. Compsys shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance with reasonable dispatch.

## **16. Notices**

All notices required or permitted to be given hereunder shall be in writing and deemed given (a) when personally delivered, (b) one (1) day after delivered to an overnight courier guarantying next day delivery, or (c) three (3) days after deposited in the Australia Post mail, postage prepaid, sent certified or registered. All notices shall be addressed to the parties at the addresses provided by the parties or to such other address as hereafter designated in writing by the applicable party in the manner provided in this Section 17 for the giving of notices.

## **17. Solicitors' Fees**

If a proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable solicitors' fees and other costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.

## **18. Arbitration**

- 18.1. If a dispute arises out of, or in any way in connection with, or otherwise relates to this agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, the parties agree to refer their dispute to Arbitration.
- 18.2. The Arbitration shall be conducted in Brisbane, Australia in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators. During such arbitration, both parties may be represented by a duly qualified legal practitioner.
- 18.3. This clause 20 shall survive termination of this Agreement.

## **19. Miscellaneous Provisions**

This Agreement, together with the attached Schedules, constitutes the entire understanding between the Licensee and Compsys with respect to the Service provided herein and supersedes any prior agreements or understandings. This Agreement may be amended only in writing signed by both of the parties hereto. If any provision of this Agreement is invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions of this Agreement, and the parties hereby agree to negotiate with respect to such invalid or unenforceable part to the extent necessary to render such part valid and enforceable. The failure of either party to enforce any provision hereof shall not constitute the permanent waiver of such provision. This Agreement shall be governed by and construed in accordance with the laws of the Australian States and Territories without regard to conflicts of law principles. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement. THE LICENSEE AND COMPSYS EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

## **20. Entire Agreement**

- 20.1. This Agreement and the attached Schedules constitute the entire understanding and agreement between the Parties relating to the Compsys Services and supersede any and all prior or contemporaneous oral or written communications.
- 20.2. Upon notice to the Licensee by email or in writing Compsys may modify the terms of this Agreement. If any modification is unacceptable to the Licensee, the Licensee may terminate the Agreement as provided in Section 13. The Licensee's continued use of Compsys Services following Compsys notification of the changes will constitute binding acceptance of the change.
- 20.3. Compsys may discontinue or change the services offered in the event of the Licensee's failure to comply with the following provisions.
- 20.4. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

## **SCHEDULE A**

### **Service Description and Licensing Overview**

This Schedule is part of the "Harmony Software License Agreement" (HSLA) entered into by and between Harmony and the Licensee effective on the Start Date. Harmony will deliver the Service(s) selected by the Licensee, as specified in the Tax Invoice, according to the conditions outlined herein. This Schedule and related Schedules shall continue for a Term, as defined in the SLA, for the term specified in the Tax Invoice ("Term") from the Start Date.

### **Service Description**

Harmony will provide the Licensee with Services as specified in the Tax Invoice. Harmony Licensing Options and Service Deliverables are as follows:

### **Licensing Options**

The Licensing Options are as follows:

- Harmony Single Site license (monthly)
- Harmony Single Site license (yearly)

Both licensing options include:

- Application hosting
- Data back up
- Automatic software upgrades
- Online video training and documents (Learning Path)
- Online technical support
- Phone support
- CCS interface

### **Service Deliverables**

Harmony will provide you with use of the purchased Licensing Option, including a browser interface and requisite data transmission, access and storage. Harmony will commit that this service will be available for use by the Licensee and that the hosting infrastructure used to provide the service will provide commercially reasonable levels of data back up and security.

### **Licensee Obligations**

In addition to obligations specified in the SLA, the Licensee is obligated to adhere to the Harmony Acceptable Use Policy (Schedule B). Failure to adhere to this policy can result in suspension of the Licensee's Service.



## SCHEDULE B

### Acceptable Use Policy (“AUP”)

This Schedule is part of the “Harmony Software License Agreement” (HSLA) entered into by and between Compsys Business Services (Australia) Pty Ltd (ACN 095 164 588) trading as Harmony (“**Compsys**”) and the Licensee. This Schedule and related Schedules shall become effective as specifically designated on the related Schedule A. Compsys reserves the right to modify this policy at any time.

Please read this document carefully before accessing Compsys Services. By using any Compsys Hosted Software Application Program you agree to comply with the terms of our acceptable use policy.

#### 1. Definitions

“**AUP**” means the Harmony Acceptable Use Policy.

“**Eligible data breach**” occurs where both of the following conditions are satisfied:

1.
  - (i) there is unauthorised access to, or unauthorised disclosure of, the information;
  - (ii) a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the information relates;

OR

2. the information is lost in circumstances where:
  - (i) unauthorised access to, or unauthorised disclosure of, the information is likely to occur; and
  - (ii) assuming that unauthorised access to, or unauthorised disclosure of, the information were to occur, a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the information relates.

“**Information security breach**” occurs in the following situations:

- (a) there is unauthorised access to, or unauthorised disclosure of, sensitive information; or
- (b) sensitive information is lost in circumstances where it is likely that unauthorised access to, or unauthorised disclosure of, the information will occur.

“**OAID**” means the Office of the Australian Information Commissioner.

“**Personal information**” means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

“**Remedial action**” means any action taken in response to an information security breach, which prevents the serious harm from occurring to an individual/s.

#### 2. Purpose

This Acceptable Use Policy (AUP) sets out the rules which apply to use of Harmony, including your responsibilities, and permitted and prohibited uses of those services. Compliance with this Policy ensures you may continue to enjoy and allow others to enjoy optimum use of the Service.

### **3. Application**

Your obligation to comply with this Policy includes your obligation to ensure any person who you allow to use your Service also complies with this Policy. Your failure to comply with this Policy (including by any person who you allow to use your Service) may lead to the suspension or termination of your Service.

### **4. Responsible Usage**

You are responsible for your actions whilst using the Service. If you act recklessly or irresponsibly in using your Service or your actions endanger any person or the integrity or security of our Network, systems or equipment, your access may be restricted, suspended or terminated, without prior notice.

In particular, you agree that you will not use, attempt to use or allow your Service to be used to:

- (a) store, send or distribute any content or material which is restricted, prohibited or otherwise unlawful under any applicable Commonwealth, State or Territory law, or which is likely to be offensive or obscene to a reasonable person;
- (b) store, send or distribute confidential information, copyright material or other content which is subject to third party intellectual property rights, unless you have a lawful right to do so;
- (c) do anything, including store, send or distribute material which defames, harasses, threatens, abuses, menaces, offends, violates the privacy of, or incites violence or hatred against, any person or class of persons, or which could give rise to civil or criminal proceedings;
- (d) do any other act or thing which is illegal, fraudulent or otherwise prohibited under any applicable Commonwealth, State or Territory law or which is in breach of any code, standard or content requirement of any other competent authority;
- (e) do anything, including store, send or distribute material, which interferes with other users or restricts or hinders any person from accessing, using or enjoying the Harmony Service, Network or systems;
- (f) forge header information, email source address or other user information;
- (g) access, monitor or use any data, systems or networks, including another person's private information, without authority or attempt to probe, scan or test the vulnerability of any data, system or network;
- (h) compromise the security or integrity of any network or system including our Network;
- (i) access, download, store, send or distribute any viruses or other harmful programs or material;
- (j) use another person's name, username or password or otherwise attempt to gain access to the account of any other Customer;
- (k) tamper with, hinder the operation of or make unauthorised modifications to any network or system; or
- (l) authorise, aid, abet, encourage or incite any other person to do or attempt to do any of the above acts.

### **5. Excessive Use**

You must use your Service in accordance with any capacity limits stated in the specific plan that you subscribe to for the use of that Service. We may limit, suspend or terminate your Service if you unreasonably exceed such limits or excessively use the capacity or resources of our Network in a

manner which may hinder or prevent us from providing services to other customers or which may pose a threat to the integrity of our Network or systems.

## **6. Data Security and Breaches**

The Licensee and Compsys jointly hold individuals' personal information. As such, both parties are jointly responsible for reporting eligible data breaches if and when they occur. This clause 6 sets out the Licensee's data security obligations and the allocation of responsibility for notifying relevant parties in the event of an eligible data breach.

### **6.1. Licensee Obligations.** The Licensee is responsible for:

- 6.1.1. maintaining the security of your Service, including protection of account details, passwords and protection against unauthorised usage of your Service by a third party;
- 6.1.2. taking appropriate security measures such as installation of a firewall and use of up to date anti-virus software;
- 6.1.3. keeping and maintaining all personal information in strict confidence, taking care to avoid unauthorised access, use or disclosure;
- 6.1.4. providing appropriate privacy and information security training to its employees;
- 6.1.5. compliance with the relevant privacy laws; and
- 6.1.6. all charges incurred by other persons who you allow to use your Service, including anyone to whom you have disclosed your password and account details.

### **6.2. Data Breach Response Plan**

6.2.1. If the Licensee becomes aware of an actual, or potential, eligible data breach, the Licensee shall immediately notify Compsys and provide Compsys with the following details:

- (a) The nature of the data breach;
- (b) The type and sensitivity of the information involved in the data breach;
- (c) Remedial action that has been taken in response to the data breach;
- (d) Any security measures in place to protect the data;
- (e) The nature of the harm that may arise as a result of the data breach; and
- (f) Any other relevant matters.

Where possible, Compsys will endeavour to work with the Licensee to take remedial action to prevent serious harm from eventuating to the individual/s the subject of the data.

6.2.2. Alternatively, if Compsys becomes aware of an eligible data breach in respect of the Licensee's data, Compsys may notify the Licensee and, where possible, work with the Licensee to take remedial action to prevent serious harm from eventuating to the individual/s the subject of the data.

- 6.2.3. Where an eligible data breach has occurred, Compsys shall determine which party is responsible for the data breach and allocate responsibility for notification of the data breach to the individual/s the subject of the data and/or OAIC.
- 6.2.4. As a general rule, a party will be deemed responsible for the data breach where that party's employee/s or premises have:
- 6.2.4.1. lost, or have been the subject of a theft of, laptops, removable storage devices, or paper records containing personal information;
  - 6.2.4.2. disposed of hard disk drives and other digital storage media without the contents first being erased;
  - 6.2.4.3. accessed or disclosed personal information outside the requirements of authorisation of their employment;
  - 6.2.4.4. had paper records stolen from insecure recycling or garbage bins;
  - 6.2.4.5. mistakenly provided personal information to the wrong person, for example, an email was sent to the wrong address;
  - 6.2.4.6. has been deceived into improperly releasing the personal information of another person; and
  - 6.2.4.7. any other scenario that Compsys deems the responsibility of the Licensee.
- 6.2.5. Compsys will also be deemed responsible for a data breach where its database/s containing personal information are hacked into or otherwise illegally accessed by individuals outside of the Compsys organisation.
- 6.2.6. The party Compsys deems responsible for the data breach has the responsibility of reporting the breach to:
- 6.2.6.1. the individual the subject of the information;
  - 6.2.6.2. the OAIC; and
  - 6.2.6.3. any other relevant third party.
- 6.2.7. As a general rule, Licensee will be responsible for contacting the individual/s the subject of the data breach because they have an existing relationship with the individual/s.

## **7. Copyright**

It is your responsibility to ensure that you do not infringe the intellectual property rights of any person in relation to any material that you access, copy, store, send or distribute using your Service.

## **8. Content**

You are responsible for any content you store, send or distribute on or via our Network. You must not use such services to send or distribute any content which is prohibited, deemed obscene or offensive or otherwise unlawful under any applicable Commonwealth, State or Territory law.

## **9. Regulatory Authorities**

You must not hinder or prevent us from taking all steps necessary to comply with any direction from any law enforcement or security agency. You acknowledge that Compsys reserves the right to limit, suspend or terminate your Service if there are reasonable grounds for suspecting that you are engaging in illegal conduct or where use of your Service is subject to any investigation by law enforcement or regulatory authorities.

## **10. Suspension or Termination**

- 10.1. Compsys reserves the right to suspend your Service if you are in breach of this Policy, provided that we will first take reasonable steps to contact you and give you the opportunity to rectify the breach within a reasonable period. What is reasonable in this context will depend on the severity of the problems being caused by the breach (for example, if you commit a serious or continuing breach, it may be reasonable to immediately suspend your Service without notice to you).
- 10.2. Our right to suspend your Service applies regardless of whether the breach is committed intentionally, through misconfiguration, or by other means not authorised by you.
- 10.3. If your Service is suspended and the grounds upon which it was suspended are not corrected by you within an agreed timeframe, we may terminate your Service. In the event your Service is terminated, you may apply for a pro rata refund of any pre-paid charges for your Service, but we will have the right to levy a reasonable fee for any costs incurred as a result of the conduct that resulted in the suspension.

## **11. Changes**

Compsys may vary this Policy by giving you notice by email to the email address notified by you or otherwise in accordance with the notice provisions of your service agreement with us. Your continued use of your Service after such notice will constitute acceptance of the variation.

## **SCHEDULE C**

### **Providing Online Access to Harmony Software for Home Based Educators**

This Schedule is part of the 'Harmony Software License Agreement' (HSLA) entered into by and between Harmony and the Licensee. This Schedule sets out the agreement to enable FDC/IHC/Nanny/Carers (herewith called "Educators") with access and use of Harmony Software.

Harmony Software provides online integration between the Licensee and its Educators. The Licensee is granting Educators permission to access certain components of the database and to undertake transactions and share data and files online.

This Schedule applies to Educators that are employees or sub-contractors to the Licensee.

The rules and principles upon which Harmony Software will facilitate Educator access to the system include;

1. Licensee decision to provide Educators with access. The Licensee has the sole authority to provide an Educator with access to their Harmony Software database. In effect, the Licensee is providing permission for the Educator to share files and transactions.
  - a. It is the responsibility of the Licensee to set its own rules, policies and operating procedures with regards to how they will engage with their own Educators accessing and using Harmony. These rules, policies and operating procedures must not breach the Harmony Software License Agreement (HSLA).
  - b. This does not negate the opportunity for Harmony to provide other products and services directly to Educators that do not include access to the data and files belonging to the Licensee. For example, Educators may elect to purchase independently of the Licensee additional software features, such as a private cash book or electronic payment gateway services.
  - c. Harmony Software will provide a mechanism for the Licensee to activate, and inactivate an Educator's access to Harmony. If requested by the Licensee in writing, Harmony can activate or inactivate Educators on the Licensee's behalf.
2. Subscription Self Management. Harmony provides the ability for the Licensee to manage the subscription details of the Educator, including the modules purchased. There is also functionality that enables Educators to manage their own subscription details, including the modules they can purchase and set the activation or inactivate dates.
3. Harmony pricing methodology for Educators.
  - a. Prices are quoted as a \$ rate per week per module.
  - b. GST is included.
4. Subscription Payment Methods. There are two options for Educators to pay for their Harmony subscription. The options are called, "Pre-paid" or "Deduction".
  - 4.1. Deduction method
    - 4.1.1. Harmony subscription fees are deducted by the Licensee on behalf of Harmony during each week or fortnightly processing cycle. Harmony provides a process to automate the recording of these transactions.
    - 4.1.2. The monies collected will be paid to Harmony by the Licensee in the month after the fees were deducted from Educators.
    - 4.1.3. A Statement will be generated in Harmony reporting fees deducted from Educators.

- 4.1.4. The Harmony Software deduction will appear on the Educator's Payment Advice.
- 4.1.5. The Licensee has the option of passing on Harmony's fees in full or at a subsidised or \$zero amount to their Educators. For example, if the Harmony fee is \$3 a week, the Licensee may elect to deduct the full amount, or deduct a lower amount, such as \$2 or \$0. This is a business decision of the Licensee.
- 4.1.6. The Licensee is not required to offer the Deduction Method to its Educators. It is optional, and a business decision of the Licensee.
- 4.2. Prepayment Method
  - 4.2.1. The Educator manages their software subscription via the My Profile module in their version of Harmony
  - 4.2.2. The Educator pays for his/her access directly to Harmony on a prepaid basis. The prepaid period may vary, but in most cases will be quarterly in advance.
  - 4.2.3. Harmony provides the ability for the Educator, or the Licensee on the Educator's behalf, to activate their subscription. This includes the ability to cease their subscription.
  - 4.2.4. If the Licensee inactivates an Educator's access to Harmony during their pre-paid subscription period, Harmony is not required to refund monies to the Educator.
- 4.3. Educators that are employees. Licensees that engage Educators as employees, rather than subcontractors, will be invoiced directly by Harmony for the number of Educators accessing the system and the modules they use.
- 5. Training and support offered by Harmony. Harmony will provide a series of training and support tools for Educators including, but not limited to the following;
  - 5.1. Online Support module to submit help desk questions to Harmony
  - 5.2. User Guide - Tip Sheets and Videos
  - 5.3. Online webinars
  - 5.4. Demo version.
  - 5.5. One-on-one online training (the Educator will be charged a fee for this training)

Harmony reserves the right to modify, replace or withdraw any of the fore mentioned training and support tools at it sole discretion.
- 6. Data ownership. As a general rule the data created and accessed by the Educator is the property of the Licensee. There are however, some components of the application in which the Educator is the owner of the data. This includes;
  - 6.1. Cash Book. The Cash Book is private to the Educator. Except for Invoicing and Receipting of parent/guardian payments (which is a legal and regulatory responsibility of the Service). The Service cannot access data relating to Educator suppliers, expenses, financial reports (Profit and Loss) and Tax reports (BAS).
  - 6.2. Depending upon the configuration of Harmony Software by the Service, Educators may also have private and confidential access to their own document library and Task/Notes system.
  - 6.3. The Educator will be provided with functions in the Software to extract in hard or soft copy certain data and transactions that they may require for the operation of their home based business. This includes, but is not limited to;
    - 6.3.1. Payment Advices
    - 6.3.2. Timesheets
    - 6.3.3. Invoices and Receipts (required for taxation purposes)

#### 6.3.4. Child and Guardian records

7. Misuse by Educator. Misuse of the system by an Educator may result in access being suspended or permanently withdrawn for that Educator. Misuse may include, but not limited to,
  - Security. Educators are responsible for maintaining their security, including protection of account details, passwords, and electronic signatures. They are not to give out their system access details, or use access codes or passwords belonging to other persons.
  - Excessive use that may hinder or prevent us providing services to other customers.
  - Content. Educators are responsible for any content stored or send via our Network. Misuse of content includes material that is prohibited, offensive or otherwise unlawful.
  - An Educator applying a process or tool to try and break passwords or circumvent data security measures of the System.
  - Create links from any other website to Harmony.
  - Reverse engineer, translate, adopt or modify any component of Harmony.
  - Provide a competitor of Harmony Software with access to the system.
8. Invoicing Parents and Receipts. For those Services in which the Educator invoices parent/guardians and collects childcare fees on behalf of the Service;
  - 8.1. All invoices and receipts generated by the Educator will be under the auspices of the Licensee. Whilst the Educator's name will appear on these transactions, the Invoice and Receipt will be issued in the name of the Licensee organisation.
  - 8.2. An Educator can copy or print copies of these transactions for their own files.
9. Educators accessing Harmony Software are required to agree with the terms and conditions of the software. Please make yourself familiar with this document.
10. Collection of Harmony subscription fees, via the deduction method.
  - a. Definition of the "Deduction Method".
    - i. The Licensee will deduct the subscription monies from Educators on behalf of Harmony.
    - ii. Harmony will provide a statement at the end of each month identifying the subscription monies that have been deducted by the Licensee.
    - iii. The Licensee will pay to Harmony the value of the Educator subscription fees, regardless of the actual monies collected from Educators.
    - iv. It is the Licensee's responsibility to record in their accounting system for the monies collected and paid out by them on behalf of Harmony.
  - b. The Licensee has the option of agreeing to collect subscription monies from Educators on behalf of Harmony.
  - c. Harmony will provide functionality within the system to enable the recording, tracking and reporting of money deductions from Educators for their access to Harmony and the fees Harmony will charge for Educator subscriptions
  - d. The Licensee can opt-in to offer its Educators the ability to pay for their subscription via the Deduction Method. In doing so, the Licensee agrees to then can pass on the Harmony fees in full, or option to either;
    - i. Absorb all or some of the subscription costs. The Service will still pay H for the full prices



Harmony will provide activity reports of Educators with online access and the modules they will be charged for.

## SCHEDULE D

### Harmony Refund Policy

Harmony do not normally give refunds if:

- A user changes their mind;
- The user knew about the particular fault before purchasing the product;
- The user found the same item or service at a cheaper price elsewhere;
- The user was responsible for causing a fault or damage after purchase; or
- The user makes a wrong decision.

Harmony will provide you a refund, partial/pro rata refund or credit where goods or services:

- are faulty;
- have been wrongly described;
- are different from a sample shown to you; or
- do not do what they are supposed to.

Cancellations must be given to Harmony in writing and require a thirty (30) days notice period.

The amount of the refund is at the discretion of Harmony and will be determined after considering the pro rata period of the service already provided and any associated establishment or set up costs.

On the Cancellation date Harmony will:

- cancel the subscription
- inactivate the user/s
- convert any annual subscriptions paid to a monthly subscription basis
- calculate the amounts owing for the months of active subscriptions and
- calculate any remaining amounts owed to the service
- apply any remaining credit held by the Harmony to the
- outstanding balances
- return the data electronically by spreadsheet to the service if requested
- *(in writing)* for an administration fee of \$55.00, and only if all
- outstanding amounts are fully paid
- provide any refund amounts at the discretion of Harmony